1303.

SUPREME COURT OF THE UNITED STATES.

No. 147.

MORGAN B. HINKLE, IN HIS OWN RIGHT, AND AS ADMINISTRATOR DE BONIS NON OF JOHN FISHER, DECEASED, COMPLAINANT AND APPELLANT,

vs.

MOSES WANZER, JAMES F. JOHNSON, AND JOHN S. HUNTER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF ALABAMA.

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GIDEON, print.

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1304.

Pleas in equity had before the honorable the circuit court of the United States, for the fifth judicial circuit and southern district of the State of Alabama, at a term thereof begun and holden in and for said district, at Mobile, on the fourth Monday of December, in the year of our Lord one thousand eight hundred and fifty-two:

Present, his honor John Gayle, judge of said court, presiding.

Be it remembered that heretofore, to wit, on the twenty-fourth day of April, A. D. 1850, Morgan B. Hinkle filed in said court his bill of complaint against Moses Wanzer, James F. Johnson and John S. Hunter, in the words and figures following, to wit:

Original bill.

In the circuit court of the United States, for the southern district of Alabama.—In chancery.

To the judges of the circuit court of the United States, for the southern district of Alabama:

Morgan B. Hinkle, of Lowndes county, and a citizen of the State of Alabama, in his own right, and also as administrator de bonis non of the estate of John Fisher, deceased, brings this his bill against Moses Wanzer, of the city of New York, and a citizen of the State of New York, James F. Johnson, (whose particular place of residence in the State of Texas is unknown to the said Hinkle,) a citizen of the State of Texas, and John S. Hunter, of Dallas county, and a citizen of the State of Alabama.

And thereupon your orator complains and says, that prior to and on the 17th day of April, 1837, the said John Fisher and James F. Johnson were merchants and partners in trade, under the name and firm of Fisher & Johnson. The said Fisher & Johnson were then the owners and holders of a certain promissory note for the sum of fifteen hundred and twenty dollars, made by Thomas Long, George D. Fisher and your orator, dated 19th December, 1836, and made payable twelve months after date to William Ryan, surviving partner of Porter & Ryan, and endorsed by the said William Ryan, and also endorsed by the said Fisher & Johnson; and being so the owners and holders of the said note, the said Fisher & Johnson, on the 17th day of April, 1837, placed the said note, together with sundry other promissory notes, in the hands of Gordon, Campbell and Chandler, attorneys, for collection, as will appear by reference to the receipt of the said Gordon, Campbell and Chandler, for the said notes, given to the said Fisher & Johnson, a copy of which receipt, marked exhibit A, is herewith exhibited, and prayed to be taken as part of this bill, and the original of which receipt is in possession of your orator, as administrator de bonis

non of the said John Fisher, and will be produced and proven as this court may direct. And your orator further saith, that the said Thomas Long was the principal debtor in the said note, and your orator was only his surety on the said note.

Your orator further saith, that about, or soon after, the said 17th April, 1837, the said James F. Johnson sold, assigned and transferred to the said John Fisher, for a good and valuable consideration, all his right and interest in or to the said note and all the other property and effects of the said firm of Fisher & Johnson.

Your orator further saith, that the said John Fisher died intestate on or about the 9th day of February, 1838, in Lowndes county, Alabama, where he then resided, and soon after his death, administration on his estate was duly granted by the orphan's court of said county to his widow, Nancy Fisher, and his brother, William P. Fisher; and the said administrator and administratrix having afterwards resigned the said administration, your orator was afterwards, to wit, on the 3d day of December, 1849, duly appointed administrator de bonis non of the estate of the said John Fisher, deceased, as will appear by the letters of administration granted to your orator, which are herewith exhibited, marked exhibit B, and prayed to be taken as part of this bill.

And your orator further showeth, that after the said note had been so put into the hands of the said attorneys, by the said Fisher & Johnson, for collection as aforesaid, to wit, on the first day of March, 1838, a suit was instituted by the said attorneys on the said note in the circuit court of the United States, for the southern district of Alabama, in the name of the said Moses Wanzer as plaintiff, against the said Thomas Long, George D. Fisher and your orator, in which suit such proceedings were had, that afterwards, to wit, on the 11th day of April, 1839, a judgment was rendered therein by the said circuit in favor of the said Moses Wanzer against the said Thomas Long and your orator, for the sum of sixteen hundred and ninety-one dollars damages, besides also costs, as will more fully appear by reference to the record and proceedings in said suit, remaining of record in this court, and to all which your orator prays leave to refer as part of this bill.

And your orator further saith, that he is informed and believes it to be true, and expressly charges, that the said note did not belong to the said Moses Wanzer at the time suit was brought on the same in his name as aforesaid.

After the rendition of the said judgment, the said Moses Wanzer informed your orator that the said Fisher & Johnson, or the said Fisher, had owed him, the said Wanzer, a small sum of money which had been fully paid off to him, and that he, the said Moses Wanzer, did not know why suits had been brought in his name on the said note and on some other notes mentioned in the said receipt; and the said Moses Wanzer then stated and admitted to your orator, that he, the said Wanzer, had no interest whatever in the said judgment, and did not pretend to claim any right to or interest in the said judgment; and so your orator avers, that the said Moses Wanzer, though the nominal

plaintiff in the said judgment, has not in equity any right to the same or the money due thereon, if any money be yet due on the same.

Your orator further saith, that he has been informed and believes it to be true, and accordingly here charges, that the said John S. Hunter claims an interest in the said judgment, and pretends that he has a right to the said judgment. Your orator does not know on what grounds or pretext the said John S. Hunter claims to have a right to the said judgment; your orator has never heard of the said Moses Wanzer having ever assigned or transferred the said judgment to the said John S. Hunter; and your orator avers, that to the best of his knowledge, information and belief, the said Moses Wanzer never did assign or transfer the said judgment to the said John S. Hunter.

Your orator further saith, that he has been informed and believes it to be true, that the said John S. Hunter was bound as security or endorser for the said Fisher & Johnson, or for the said Fisher, for the payment of some amount of money, but your orator is not informed and cannot state in what particular manner, nor to what amount the said Hunter was so bound, but the said Hunter, if so bound, knows and can state in what manner and to what amount he was so bound. Your orator does not know of his own knowledge whether the said Hunter has or has not paid out of his own funds any money as security or endorser for the said Fisher or the said Fisher & Johnson, but to the best of the knowledge, information and belief of your orator, the said Hunter has not paid out of his own funds any money as security or endorser for the said Fisher or for the said Fisher & Johnson; or if the said Hunter has paid any money as security or endorser as aforesaid, the same has been fully reimbursed and refunded to him. Your orator is informed and believes and here charges, that for a large portion, if not the whole of the liability of the said Hunter as security or endorser as aforesaid, the said Hunter was fully indemnified by a mortgage or deed of trust on real estate and slaves of the said Fisher, in Lowndes county, which real estate and slaves have been sold under the said mortgage or deed of trust, for an amount sufficient to pay off the said liability.

Your orator further saith, that besides the real estate and slaves mentioned in the said mortgage or deed of trust, divers promissory notes, accounts, credits, property and effects of the said Fisher & Johnson, and of the said Fisher in his lifetime, and of the estate of the said Fisher since his death, of great value and amounting to a large sum of money, came to the hands of the said John S. Hunter, and were held, claimed and collected by him for the alleged purpose of indemnifying him as security or endorser as aforesaid.

Your orator cannot state what particular notes, accounts, credits, property and effects of the said Fisher & Johnson, or of the said Fisher, or of the estate of the said Fisher, so came to the hands of the said John S. Hunter, but the same is known to the said Hunter; and your orator cannot state what amount of money was received or collected by the said Hunter for or on account of such notes, credits, accounts, property and effects, but the same is known to the said Hunter.

And your orator saith, that he is informed and believes it to be true, and charges that the said Hunter received and collected on the said notes, accounts, credits and effects, a large amount of money greatly more than sufficient to indemnify him for any liability he may have been under as security or endorser as aforesaid, and greatly more than sufficient to reimburse and refund to him any money he may have paid as such security or endorser; and that said Hunter is in fact largely indebted to the estate of the said John Fisher, on account of moneys so received and collected by him.

And your orator further saith, that he is informed and believes it to be true, and charges that the said Hunter claims to be entitled to the said judgment or the money supposed to be due thereon, as an indemnity to him for his alleged liabilities as security or endorser as aforesaid; and under such claim, the said Hunter, by permission of the attorneys of the plaintiff in the said judgment, has exercised control over the said judgment, and the execution, and summons of garnishment issued thereon, since the 16th day of September, 1849, as hereinafter shown; and your orator avers and charges, that such claim of the said Hunter is invalid and unfounded at law or in equity.

And your orator further saith, that the said Thomas Long (who was the principal debtor in the said judgment, and for whom your orator was only security on the note on which the said judgment is founded) died on or about the day of 1843, and was insolvent at the time of his death; and your orator further saith, that sometime in the year 1841, he was informed by the said Thomas Long that the said John S. Hunter claimed to be entitled to the money due on the said judgment, and that he, the said Thomas Long, had fully paid off and satisfied to the said Hunter the amount of the said judgment; and the said Thomas Long then produced and showed to your orator a receipt or statement in writing signed by the said John S. Hunter, (whose handwriting was well known to your orator,) showing that the said judgment had been so paid and satisfied by the said Long; and your orator believes that the statement so made by the said Thomas Long was true, and so your orator charges, that if the said John S. Hunter ever really had any good claim to or interest in the said judgment, the same was fully paid off and satisfied by the said Long to the said Hunter as aforesaid.

And your orator further showeth, that an execution or writ of fieri facias was issued on the said judgment on the 2nd May, 1839, which was duly returned no property found, and an alias execution or writ of fieri facias was issued on the said judgment on the 10th January, 1840, which was also duly returned no property found; and after the return of the said alias execution for a number of years, and up to and until the 17th September, 1849, no further proceedings were had on the said judgment against your orator.

And from the information which had been given to your orator by the said Moses Wanzer, and also by the said Thomas Long, as hereinbefore set forth, your orator had supposed that no further proceed-

ings would be had against him on the said judgment. But after the lapse of so long a time, and after the death of the said Long, a pluries execution was issued on the said judgment against the property of your orator, on or about the 17th day of September, 1849, which was levied on the property of your orator, and also on a sum of money belonging to other persons found in your orator's possession, and since then a summons of garnishment has been issued on the said judgment to John N. Smith, on the alleged ground that the said Smith is indebted to your orator, or has property of your orator in his possession. And your orator is informed and believes it to be true, and charges that the said John S. Hunter caused or procured the issuance of the said last mentioned execution and summons of garnishment, and he is wrongfully, fraudulently and oppressively using the said judgment, and the process issued thereon, for the purpose of harassing and injuring your orator, and collecting from your orator the amount of the said judgment, when in fact nothing is due or payable on the said judgment either to the said Moses Wanzer or to the said John S. Hunter. Your orator does not know and cannot say whether the said last mentioned execution and summons of garnishment were or were not so issued with the knowledge or consent of the said Moses Wanzer; but your orator is informed and believes, that they were issued with the knowledge and consent of the attorneys of record of the plaintiff in the said judgment, though your orator has no belief that the said attorneys had any knowledge or suspicion of the wrongful, fraudulent and oppressive use which the said Hunter intended to make and has made of the same. All which actings and doings of the said Hunter and the said Wanzer are contrary to equity and good conscience, and tend to the manifest injury of your orator in the premises.

In consideration of the premises, your orator prays that the said Moses Wanzer, James F. Johnson and John S. Hunter, may be made parties defendants to this bill of complaint, and that they be severally required to answer respectively, on oath, to the best of their knowledge, information and belief, each and all of the allegations contained in this bill, and especially to answer the following interrogatories:

1. Did, or did not, the said Fisher & Johnson place in the hands of Gordon, Campbell & Chandler, as attorneys for collection, the note made by Thomas Long, George D. Fisher and your orator, hereinbefore mentioned; and did not the said note then belong to the said Fisher & Johnson?

2. Was, or was not, suit brought on the said note in the name of the said Moses Wanzer as plaintiff, and judgment rendered thereon and executions issued on the said judgment, as hereinbefore set forth?

3. Did, or did not, the said James F. Johnson sell, assign and transfer to the said John Fisher his interest in the said note and in the other property and effects of the said firm of Fisher & Johnson, as herein set forth?

4. Was, or was not, the said note the property of the said Moses Wanzer, at the time it was sued on in his name? Had he, or had he

not then any, and if any, what interest in the said note? Was, or was not, suit brought on the said note in the name of the said Wanzer, by his directions?

5. Has, or has not, the said Wanzer any, and if any, what interest in the said judgment at this time? Did, or did not, the said Wanzer at any time state or admit to the said complainant that he had no interest in the said judgment?

6. Has, or has not, the said Wanzer ever transferred or assigned the said judgment to the said John S. Hunter; and if he has, when or about what time, and where, and on what consideration, and for what purpose, and how, was such transfer or assignment made?

7. Has, or has not, every debt at any time due from the said Fisher & Johnson, or from the said Fisher to the said Wanzer, been paid or settled; and if not paid or settled, how much yet remains due to the said Wanzer on the same?

8. Did, or did not, the said Wanzer, order or knowingly permit the issuance of the pluries execution, issued on the said judgment on the 17th September, 1849, or any other execution or summons of garnishment issued on the said judgment since that time?

9. Has, or has not, the said John S. Hunter at any time claimed to be entitled to or interested in the said judgment; and if so, when or about what time, and how and on what consideration, and from whom and for what purpose, did he derive or procure such claim?

10. Has, or has not, the said John S. Hunter exercised any control over the said judgment, or over any execution or process issued thereon? Did, or did not, the said John S. Hunter cause or procure, or direct the issuance of the pluries execution, issued on the said judgment on or about the 17th September, 1849, and the summons of garnishment herein mentioned; and has he, or not, claimed or exercised any control over the said pluries execution or summons of garnishment?

11. For what particular and specific debt or debts was the said John S. Hunter bound or liable as security or endorser for the said firm of Fisher & Johnson, or the said Fisher? Had he, or not, any mortgage or deed of trust on any, and what, real estate or slaves to indemnify him against such liability for any such debt or debts; and if so, what has been done with the property embraced in such mortgage or deed of trust?

12. What property, notes, accounts, credits or effects of the said Fisher & Johnson, or of the said Fisher, or of the estate of the said Fisher, have at any time come to the hands of the said John S. Hunter, and been claimed, held, collected, or used by him, to indemnify him for his liabilities as security or endorser for the said Fisher & Johnson, or for the said Fisher? What amount of money has he received for or collected on each such piece of property, notes, accounts, credits and effects; and how, and to what use, has he applied the money so received and collected by him?

13. Did, or did not, the said Thomas Long, at any time or in any

and what manner, pay, satisfy, settle or secure to the said John S. Hunter the amount of the said judgment, or any or what part thereof? Did, or did not, the said Hunter give or sign any receipt or statement to the said Thomas Long, showing the payment, settlement, satisfaction, or securing of the said judgment, or any part thereof, to the said Hunter?

And your orator prays that an order or decree may be made, declaring the said judgment to be satisfied, and directing satisfaction of the same to be entered; or that your orator, as administrator de bonis non of the said John Fisher, deceased, may be declared to be entitled to the said judgment, and to control the same if any thing shall be found due thereon; and that the said Moses Wanzer and John S. Hunter, and their agents and attorneys, be restrained and enjoined from any further proceedings on the said judgment against your orator; and that the said John S. Hunter and Moses Wanzer, respectively, may be ordered to account for and pay over to your orator any money which either of them, respectively, may have received or collected from your orator on the said judgment since the 17th day of September, 1849. And if the said John S. Hunter shall claim the said judgment as security or indemnity for any alleged liability of the said Hunter, as security or endorser for the said Fisher & Johnson, or for the said Fisher, that the said Hunter may be ordered and required to show on what debt or debts he was so bound or liable, and what amount, if any, he has paid on each such debt out of his own funds; and that he may be ordered and required to discover, set forth, and account for all the property, real and personal, and all the moneys, notes, accounts, credits, and effects of the said Fisher & Johnson, or of the said Fisher, or of the estate of the said Fisher, which at any time came to his hands, or to the hands of any other person for him, and which were claimed, used or received by him for the purpose of indemnifying him as security or endorser for the said Fisher & Johnson, or for the said Fisher. And that your *honor* may have all such other and further relief in the premises as his case may require. May it please your honor to grant to your orator writs of subpœna in chancery, requiring the said Moses Wanzer, James F. Johnson, and John S. Hunter to appear and answer this bill, &c. And your orator will ever pray, &c.

JONES & McKINSTRY,
Solicitors for complainant.

Note.—The defendant, Moses Wanzer, is required to answer the interrogatories numbered, respectively, 1, 2, 4, 5, 6, 7, and 8.

The defendant, James F. Johnson, is required to answer the interrogatories numbered, respectively, 1, 2, 3, 4, and 7.

The defendant, John S. Hunter, is required to answer the interrogatories numbered, respectively, 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, and 13.

JONES & McKINSTRY,
Solicitors for complainant.

Affidavit.

THE STATE OF ALABAMA, *Mobile county, ss:*

Before me, Sidney T. Douglas, a justice of the peace in and for said county, this day personally appeared Morgan B. Hinkle, the complainant in the foregoing bill, who being by me first duly sworn, saith on oath that the statements and allegations in the foregoing bill, so far as made on his own knowledge, are true, and so far as made on the information of others, he believes them to be true.

MORGAN B. HINKLE.

Subscribed and sworn to before me, at Mobile, April 5th, 1850.

S. T. DOUGLAS, *J. P.*

Exhibit A.—Attorneys' receipt.

Received, Mobile, 17th May, 1837, of Fisher & Johnson, for collection, the following promissory notes: One drawn by J. V. Daniel, James Porter, and R. B. Montgomery, in favor of William Ryan, surviving partner of Porter & Ryan, for $1,400, dated 19th December, 1836, due twelve months after date; one drawn by Thomas Long, George D. Fisher, and Morgan B. Hinkle, in favor of Wm. Ryan, as in the first, for $1,500, dated 19th December, 1836, due twelve months after date; one drawn by S. G. Moss and Daniel Bell, as above, for $880, dated Jan'y 23d, 1836, due twelve months after date; one, under seal, drawn by John Mushat, in favor of John Fisher and Wm. Ryan, for $2,250, dated January 23d, 1836, due on the first of January, 1838; one drawn by James Porter, J. V. Daniell, and R. B. Montgomery, in favor of Wm. Ryan, surviving partner of Porter & Ryan, for $1,000, dated 19th December, 1836, due twelve months after date; one drawn by John Scott, jr., in favor of James Davenport, for $1,326, dated Hayneville, January 9th, 1837, due on the first day of January next; one drawn by B. F. Dozier, John Fisher, and B. F. Johnson, in favor of Wm. Ryan, surviving partner of Porter & Ryan, for $690, dated 19th December, 1836, due twelve months after date; and one drawn by George Givham, J. V. Daniell, and R. B. Montgomery, for $680, dated 19th December, 1836, due twelve months after date. The proceeds of all which notes, as they may be collected, are to be appropriated by us to the payment of any demands which we may hold against said Fisher & Johnson upon their own debts, and not upon endorsements or liabilities for others.

GORDON, CAMPBELL & CHANDLER.

Exhibit B.

THE STATE OF ALABAMA, *Lowndes county:*

Orphans' court, begun and held in Hayneville, for said county, at the court-room thereof, on the 3d day of December, 1849. Present, his honor Edward H. Cook, judge presiding.

This day Morgan B. Hinkle came into court and made application

for letters of administration de bonis non on the estate of John Fisher, deceased, and no one appearing to object or show cause why letters should not be granted to him: whereupon, it is ordered by the court, that Morgan B. Hinkle be, and he is hereby, appointed administrator de bonis non of and upon the goods and chattels, rights and credits which were of John Fisher, deceased, upon his entering into bond with approved security, and taking the oath prescribed by law.

Morgan B. Hinkle, having entered into bond with John P. Nall and John M. Cole, as his securities for his faithful administration and management of said estate, which is approved by the court:

Ordered, That the clerk issue to Morgan B. Hinkle his letters of administration de bonis non of and upon the goods and chattels, rights and credits which were of John Fisher, deceased.

Ordered, That said administrator give notice to all persons indebted to said estate to make immediate payment, and those having claims against the same to present them, duly authenticated, within the time prescribed by law, or they will be barred.

THE STATE OF ALABAMA, *Lowndes county:*

I, William A. Rice, clerk of the county court, in and for said county, do hereby certify that the foregoing contains a true and correct copy of the appointment of Morgan B. Hinkle as the administrator de bonis non of the estate of John Fisher, deceased, and the orders thereto.

Given under my hand and seal of office, this the 30th day of March, [SEAL.] 1850.

WILLIAM A. RICE, *Clerk.*

Filed 24th April, 1850, and subpœna issued.

Attest: JOHN FITTS, *Clerk.*

Caption.

Pleas before the honorable circuit court of the United States, for the ninth judicial circuit and southern district of Alabama, at a term thereof, begun and held in and for said district, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-nine.

Parties.

MOSES WANZER
vs.
THOMAS LONG, George D. Fisher, and Morgan B. Hinkle.

Transcript of judgment in the case of Wanzer vs. Long & Hinkle.

Be it remembered, that heretofore, to wit, on the twentieth day of March, in the year of our Lord one thousand eight hundred and thirty-eight, Moses Wanzer sued out of said court a writ of capias ad respondendum against Thomas Long, George D. Fisher, and Morgan B. Hinkle, in the words and figures following, to wit:

Capias.

UNITED STATES OF AMERICA.

Circuit court of the United States for the ninth judicial circuit, southern district of Alabama.

The President of the United States, to the marshal of said district, greeting:

You are hereby commanded to take the bodies of Thomas Long, George D. Fisher, and Morgan B. Hinkle, who are citizens of the State of Alabama, and them safely keep, so that you have them before the honorable the circuit court aforesaid, at the place of holding said court, at Mobile, on the second Monday of April next, to answer unto Moses Wanzer, who is a citizen of the State of New York, in a plea of trespass on the case, to his damage three thousand dollars.

Herein fail not, and have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, [L. S.] this second Monday of October, in the year of our Lord one thousand eight hundred and thirty-seven.

Issued the 20th day of March, in the year of our Lord one thousand eight hundred and thirty-eight.

Attest: DAVID FILES,
Clerk so. dist. Alabama.

Cause of action.

This action is brought to recover the amount of a promissory note signed by defendants for $1,520, dated November 19th, 1836, due twelve months after date.

GORDON, CAMPBELL & CHANDLER,
Plaintiff's attorneys.

Marshal's return.

Received March 20th, 1838. Executed on Long & Hinkle, 2d April, 1838.

R. L. CRAWFORD, *U. S. M.*

Declaration.

UNITED STATES OF AMERICA.

Circuit court of the United States, for the ninth judicial circuit, southern district of Alabama.

April term, 1838.

Moses Wanzer, who is a citizen of the State of New York, by attorney, complains of Thomas Long, George D. Fisher, and Morgan B. Hinkle, who are citizens of the State of Alabama, in custody, &c., of a plea of trespass on the case, &c.

For that whereas, the said defendants, heretofore, to wit, on the 19th day of December, 1836, at , to wit, in the district aforesaid, made their certain promissory note, in writing, bearing date the day and year aforesaid, and then and there promised, twelve months after the date thereof, to pay to the order of William Ryan, surviving partner of Porter & Ryan, fifteen hundred and twenty dollars, for value received, negotiable and payable at the Branch of the Bank of the State of Alabama, at Mobile, and then and there delivered the said promissory note to the said payee, who is an alien and citizen of the Republic of Texas, who afterwards and before the payment thereof, to wit, on the day and year aforesaid, endorsed and delivered the same to the said plaintiff. By means whereof, and by force of the statute in such case made and provided, the said defendants became liable to pay to the said plaintiff the said sum in the said promissory note specified, according to the tenor and effect thereof, and being so liable, they, the said defendants, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook and then and there faithfully promised the said plaintiff to pay him the said sum of money in the said promissory note specified. Yet the said defendants, though often requested, have not paid the said plaintiff the said sum of money in the said promissory note specified, or any part thereof, but the same to pay have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of the said plaintiff of three thousand dollars, wherefore he sues.

GORDON, CAMPBELL & CHANDLER,
Plaintiff's attorneys.

Minutes.

And on the 10th day of April, the same being a day of the April term, A. D. 1839, of the circuit of the United States aforesaid, the honorable William Crawford, judge presiding, a judgment was rendered in this cause, in the words and figures following, to wit:

Judgment.

MOSES WANZER
vs.
T. LONG et al.

This day came the plaintiff, by his attorneys, and the writ issued in this cause being returned executed as to Long and Hinkle, and the said defendants being solemnly called, came not, but wholly made default, whereby the said plaintiff therein against them remains altogether undefended.

It is therefore considered by the court, on motion, that the said plaintiff do recover against the said defendants his damages; but because it is unknown what damages he has sustained, let a jury come forthwith and assess the same.

And now, this day, that is to say, on the 10th day of April, 1839, being a day of the present term of this court, came the said plaintiff, and the following jury, to wit:

Charles Stebbins, Jacob J. Sherman, H. O. Hall, Henry V. H. Voorhees, John R. Elliott, James Palmer, William Austin, William S. Rowe, Dudley Hubbard, George Wragg, Samuel Warren, and James Moreland, twelve good and lawful men, who being elected, tried, and sworn, upon their oaths do say, that we, the jury, assess the said plaintiff's damages at sixteen hundred and ninety-one dollars.

It is therefore considered by the court, that the said Moses Wanzer, plaintiff, do recover against the said Thomas Long and Morgan B. Hinkle, defendants, the said sum of sixteen hundred and ninety-one dollars, the damages aforesaid, in manner aforesaid assessed, together with his costs.

Execution issued May 2, 1839.

UNITED STATES OF AMERICA.

Circuit court of the United States, for the ninth judicial circuit, and southern district of Alabama.

The President of the United States, to the marshal of said district, greeting:

You are hereby commanded, that of the goods and chattels, lands and tenements of Thomas Long and Morgan B. Hinkle, late in said district, you cause to be made the sum of sixteen hundred and ninety-one dollars, with interest thereon from the 10th day of April, A. D. 1839, which Moses Wanzer, at a term of said circuit court, begun and held on the second Monday of April, 1839, has recovered against them for damages; also the sum of forty-seven $\frac{5}{100}$ dollars, which to the said Moses in the same court were adjudged for costs and charges in that behalf expended, whereof the said Thomas and Morgan B. are convicted, as appears to us of record; and that you have the said sums of money before the said circuit court on the second Monday of November next, at the place of holding said court, at Mobile, to render to the said Moses of the damages and costs aforesaid; and have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this second Monday of April, in [L. S.] the year of our Lord one thousand eight hundred and thirty-nine.

Issued the second day of May, in the year of our Lord one thousand eight hundred and thirty-nine.

Attest: DAVID FILES, *Clerk C. C.,*
Southern district of Alabama.

Clerk's fees:		
Writ and copies - - - - -	$3 34	
Entering return - - - - -	34	
Docketing - - - - -	33	
Entering appearance - - - -	33	
Filing pleadings - - - - -	50	
Orders - - - - - -	1 33	
Trial - - - - - -	1 67	
Judgment - - - - - -	67	
Continuance - - - - -	67	
Record - - - - - -	5 50	
Taxing costs - - - - -	1 16	
Execution and return - - - -	1 67	
		$17 51
Marshal's fees - - - - -	15 00	
Attorney's fee - - - - -	15 00	
		30 00
Taxed 2d day of May, 1839.		$47 51

DAVID FILES, *Clerk.*

Marshal's return.

Received May 2d, 1839. No property found, May 20, 1839.
R. L. CRAWFORD, *U. S. M.*
By A. C. LOVE, *D. M.*

Alias execution issued the 10th January, 1840.

UNITED STATES OF AMERICA.

Circuit court of the United States, for the ninth judicial circuit, and southern district of Alabama.

The President of the United States, to the marshal of said district, greeting:

You are hereby commanded, as before, that of the goods and chattels, lands and tenements of Thomas Long and Morgan B. Hinkle, late in said district, you cause to be made the sum of sixteen hundred and ninty-one dollars, with interest thereon, from the 10th day of April, A. D. 1839, which Moses Wanzer, at a term of said circuit court, begun and held on the second Monday of April, 1839, has recovered against them for damages; also the sum of sixty-six $\frac{84}{100}$ dollars, which to the said Moses in the same court were adjudged for costs and charges in that behalf expended, whereof the said Thomas and Morgan B. are convicted, as appears of record; and that you have the said sums of money before the said circuit court, on the second Monday of March next, at the place of holding said court, at Mobile, to render to the said Moses of the damages and costs aforesaid; and have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-nine.

Issued the 10th day of January, in the year of our Lord one thousand eight hundred and forty.

Attest: DAVID FILES,
Clerk C. C., southern dis. Ala.

Clerk's fees:

Former fi. fa.	$17 51	
Record	1 50	
Taxing costs	1 16	
Execution and return	1 67	
		$21 84
Marshal's fees	30 00	
Attorney's fee	15 00	
		45 00
Taxed day of , 1839.		$66 84

DAVID FILES, *Clerk.*

Marshal's return.

Received January 14, 1840. Nulla bona.
R. L. CRAWFORD, *U. S. M.*
By JOS. B. JENNINGS, *D. M.*

Pluries fi. fa., issued 17th September, 1849.

UNITED STATES OF AMERICA.

Circuit court of the United States, for the fifth judicial circuit and southern district of Alabama.

The President of the United States, to the marshal of any district in the State of Alabama, greeting:

You are hereby commanded, as before, that of the goods and chattels, lands and tenements of Thomas Long and Morgan B. Hinkle, late in said district, you cause to be made the sum of sixteen hundred and ninety-one dollars, with interest thereon, from the 10th day of April, A. D. 1839, which Moses Wanzer, at a term of said circuit court, begun and held on the second Monday of April, A. D. 1839, has recovered against them for damages; also, the sum of seventy-five $\frac{8}{100}$ dollars, which to the said Moses in the same court were adjudged for costs and charges in that behalf expended, whereof the said Thomas and Morgan B. are convicted, as appears of record; and that you have the said sums of money before the said circuit court on the fourth Monday of December next, at the place of holding said court, at Mobile, to render to the said Moses of the damages and costs aforesaid; and have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, the second Monday of
[SEAL.] April, in the year of our Lord one thousand eight hundred and forty-nine.

Issued the seventeenth day of September, 1849.

Attest: JOHN FITTS,
Clerk C. C., So. dis. Ala.

Marshal's return.

Received September 18th, 1849. This fi. fa. was levied on the following described property and lands, to wit, as the property of Morgan B. Hinkle:

S. E. $\frac{1}{4}$	sec.	34,	T. 13,	R. 14—	160	acres.
S. W. $\frac{1}{4}$	sec.	35,	T. 13,	R. 14—	160	"
E. $\frac{1}{2}$ N. E. $\frac{1}{4}$	sec.	3,	T. 12,	R. 14—	80	"
N. W. $\frac{1}{4}$	sec.	2,	T. 12,	R. 14—	160	"
N. E. $\frac{1}{4}$ S. E. $\frac{1}{4}$	sec.	2,	T. 12,	R. 14—	40	"
S. E. $\frac{1}{4}$	sec.	2,	T. 12,	R. 14—	160	"
S. E. $\frac{1}{4}$	sec.	19,	T. 13,	R. 14—	160	"
S. $\frac{1}{2}$ N. E. $\frac{1}{4}$	sec.	17,	T. 13,	R. 14—	80	"

Also, one lot or parcel of land in the town of Hayneville, Lowndes county, Ala., west of the street running by Thaddeus Mather's gin shop, and east of the street running from the public square towards Lowndesboro', bounded on the north by the lot on which James McCall now resides, and on the south by the lot on which the Masonic Hall now stands, containing one acre, more or less, being the lot on which William E. Harris now resides, known as M. B. Hinkle's. Also, an acre lot lying on the west of the street running from the public square, in said town of Hayneville, to Lowndesboro', south of the lot occupied by Thaddeus Mather, and north of lots Nos. 11 and 12 of the original survey of the town, known as the lot on which Morgan B. Hinkle's stables now stand, containing one acre, more or less, and said land advertised. The above sale is postponed to 1st Monday of February next, the first Monday in December being court day in Montgomery.

C. BINGHAM, *Marshal.*
Per H. WILKINS, *D. M.*

Received on the within execution seventeen hundred and seventy-six $\frac{65}{100}$ dollars, which has been applied as follows, to wit: Sixteen hundred and fifty-eight $\frac{54}{100}$ dollars has been paid towards this execution, and one hundred and eleven $\frac{11}{100}$ dollars has been appropriated to court costs, twenty-eight $\frac{0}{100}$ dollars clerk's fees, thirty-three dollars marshal's fees, fifteen dollars attorney's tax fee, and forty-two $\frac{0}{100}$ dollars for commissions.

C. BINGHAM,
U. S. marshal.

Mobile, October 29th, 1849.

Venditioni exponas, issued 17th January, 1850.

UNITED STATES OF AMERICA.

Circuit court of the United States, for the fifth judicial circuit and southern district of Alabama.

The President of the United States, to the marshal of said district, greeting:

Whereas heretofore, to wit, at a term of said court, begun and held in and for said district, at Mobile, on the second Monday of April, A. D. 1839, Moses Wanzer recovered against Thomas Long and Morgan B. Hinkle a judgment for the sum of sixteen hundred and ninety-one dollars, besides interest and costs. And whereas afterwards, to wit, on the seventeenth day of September, A. D. 1849, a pluries writ of fieri facias was issued upon the aforesaid judgment, whereby the marshal of said district was commanded, that of the goods and chattels, lands and tenements, of the said Thomas Long and Morgan B. Hinkle, he should cause to be made the said sum of sixteen hundred and ninety-one dollars, with interest thereon from the tenth day of April, A. D. 1839, which the said Moses Wanzer recovered against them as aforesaid. Also the further sum of seventy-five $\frac{8}{100}$ dollars, their costs; upon which said pluries fi. fa. the marshal of said district made the following return, to wit: "This fi. fa. was levied on the following described property and lands, to wit:

The	S. E.	$\frac{1}{4}$	of sec.	24, T. 13, R. 14—	160	acres.
	S. W.	$\frac{1}{4}$	"	35, T. 13, R. 14—	160	"
E. $\frac{1}{2}$	N. E.	$\frac{1}{4}$	"	3, T. 12, R. 14—	80	"
	N. W.	$\frac{1}{4}$	"	2, T. 12, R. 14—	160	"
N. E. $\frac{1}{4}$	S. E.	$\frac{1}{4}$	"	2, T. 12, R. 14—	40	"
	S. E.	$\frac{1}{4}$	"	2, T. 12, R. 14—	160	"
	S. E.	$\frac{1}{4}$	"	19, T. 13, R. 14—	160	"
S. $\frac{1}{2}$	N. E.	$\frac{1}{4}$	"	17, T. 13, R. 14—	80	"

Also one lot or parcel of land in the town of Hayneville, Lowndes county, Ala., west of the street running by Thaddeus Mather's gin shop, and east of the street running from the public square towards Lowndesboro', bounded on the north by the lot on which James McCall now resides, and on the south by the lot on which the Masonic Hall now stands, containing one acre, more or less, being the lot on which William E. Harris now resides, known as M. B. Hinkle's. Also, an acre lot lying on the west of the street running from the public square, in said town of Hayneville, to Lowndesboro', south of the lot occupied by Thaddeus Mather, and north of lots Nos. 11 and 12 of the original survey of the town, known as the lot on which Morgan B. Hinkle's stables now stand, containing one acre, more or less, and said lands advertised. The above sale is postponed to 1st Monday in

February next, the 1st Monday in December being court day in Montgomery.

C. BINGHAM,
U. S. marshal.
Per H. WILKINS, *D. M.*

Dec'r 3d, 1849."

Now therefore, you, Charles Bingham, marshal, etc., under the authority of the President of the United States, are commanded that you do expose for sale, and sell for cash to the highest bidder, the property so levied on by you as aforesaid, and that out of the proceeds of said sale you do satisfy to the said Moses Wanzer the damages and costs, so recovered as aforesaid by him against the said Thomas Long and Morgan B. Hinkle. And have you the said proceeds and this writ before our said court on the second Monday of April next.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, this fourth Monday of December, A. D. 1849.

[SEAL.]

Issued the 17th day of January, A. D. 1850.

Attest: JOHN FITTS,
Clerk C. C. So. dist. Ala.

Marshal's return.

Received 20th January, 1850. All the within described land sold first Monday of Februry, 1850, to G. M. Eldridge, for $256 80.

C. BINGHAM,
U. S. marshal.
Per H. WILKINS, *D. M.*

Rec'd, Mobile, March 9, 1850, for all the above sale of land exposed and sold to G. M. Eldridge on 1st Monday of February, 1850, two hundred and fifty-six $\frac{80}{100}$ dollars, which have been applied as follows: To court costs, as above, forty-eight $\frac{60}{100}$, as above, and three dollars clerk's fees, leaving two hundred and five $\frac{20}{100}$ dollars to apply on this vendi. exponas.

C. BINGHAM,
U. S. marshal.

Subpœna in chancery.

UNITED STATES OF AMERICA.

Circuit court of the United States, for the fifth judicial circuit and southern district of Alabama.

The President of the United States, to the marshal of said district, greeting:

You are hereby commanded to summon Moses Wanzer, a citizen of the State of New York, James F. Johnson, a citizen of the State of Texas, and John S. Hunter, who is a citizen of the State of Ala-

bama, to be and appear at rules to be held in the office of the clerk of the court aforesaid, at Mobile, on the first Monday of June next, (1850,) to answer the bill of complaint filed in said court by Morgan B. Hinkle, in his own right and also as administrator de bonis non of the estate of John Fisher, deceased, the said Hinkle being a citizen of the State of Alabama. Herein fail not, and have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said court, [SEAL.] this second day of April, in the year of our Lord one thousand eight hundred and fifty.

Issued the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and fifty.

Attest: JOHN FITTS,
Clerk C. C. southern district of Alabama.

The defendants are required to enter their appearance on or before the first Monday of June next, (1850,) otherwise the bill will be taken as confessed.

JOHN FITTS, *Clerk.*

Marshal's return.

Received, April 25th, 1850, and executed the summons upon the attorneys of Moses Wanzer, Messrs. Campbell and Chandler, same day, and handed them a copy. Also executed the same upon Messrs. Campbell and Chandler, attorneys for James F. Johnson, on same day, and handed them a copy.

C. BINGHAM,
U. S. marshal.

UNITED STATES OF AMERICA,
Southern district of Alabama.

I appoint Calvin A. Harris, esq., my deputy, with full powers to execute this subpœna in chancery upon J. S. Hunter, esq., and make the necessary return of the same, hereby recognising all that my said attorney may lawfully do in the above premises.

Given under my hand and seal, this 27th day of April, 1850.

CHAS. BINGHAM, [SEAL.]
U. S. Marshal So. dist. Alabama.

Executed this summons upon J. S. Hunter, esq., May 3d, 1850.

C. BINGHAM, *U. S. marshal,*
By C. A. HARRIS, *D. U. S. marshal.*

Answer of the defendant Hunter.

The answer of John S. Hunter to the bill of complaint of Morgan B. Hinkle, administrator, &c., filed in the circuit court of the United States, of the southern district of Alabama, against him and others.

This defendant admits, that Fisher & Johnson were partners and owned the note specified in the bill, and that it was assigned to Gordon,

Campbell & Chandler in the manner stated, and that they gave their receipt as is specified in the bill.

This defendant admits, that the judgment was recovered in the name of Moses Wanzer, and that he now has no interest or control over it, but his name is employed for the benefit of this defendant. This defendant states, that he is informed by a surviving member of said firm that suits were brought in the name of Wanzer, because they held for collection a note of Fisher & Johnson for the sum of $885 $\frac{33}{100}$, due at 12 months from date, dated March 21, 1836, to which this fund was applicable, and that payment has been made of that note from other funds collected. This defendant states, that about the date of that receipt the said Gordon, Campbell & Chandler, as attorneys, having large claims against various firms, of which John Fisher was a party, entered into an agreement with him, a copy of which the members of that firm has furnished him, as follows: "It is the understanding and agreement between John Fisher, on behalf of himself and Fisher & Johnson, and W. P. Fisher & Co., and Gordon, Campbell & Chandler, duly authorized by their clients, Wm. Bloodgood, Wm. M. Tileston, H. & D. Parrish, and Halsey & Utter, that upon the acceptance of bills by John A. Elmore, esq., drawn by Fisher & Johnson, and endorsed by John S. Hunter, Wm. P. Fisher, and B. F. Dozier for $5,075 $\frac{98}{100}$, due at 60 days, and a bill at six months for $5,208 $\frac{98}{100}$, due at 6 months; and bills for $3,212 $\frac{88}{100}$, at 9 months, for $3,389 $\frac{67}{100}$, at 12 months; bills at $2,859, at 3 months, and for $3,035 $\frac{69}{100}$, at 6 months; to surrender all right and claim upon the following notes, when the same bills shall be paid, subject to a consideration hereafter expressed: a note of W. P. Fisher & Co., dated 6th May, 1835, due at 3 days, for $9,834 $\frac{52}{100}$; a note of Green Wood, Fisher & Johnson, and Porter & Ryan for $1,000, due 17th January, 1837; a note of Fisher & White for $4,743 $\frac{94}{100}$, and a note of W. & J. Fisher for $3,633 $\frac{38}{100}$, the first due 14th January, 1837, the last due 9th May, 1835. As suits have been commenced on these notes, judgments are to be taken at the next term of the circuit court of the United States for the southern district of Alabama, but no execution is to issue until default shall be made in the payment of these bills, when these may be collected, the amount due on those that may be protested; and if the bills shall be regularly met, then the judgment to be discharged, except for the costs, which Fisher & Johnson are to pay.

These bills are to be furnished in a short time; they bear date on the 29th March, 1837.

And upon the receipt of bills from the same parties for $518 81 due at 9 months, $528 59 at 12 months, $499 35 at 3 months, and $509 13 at 6 months, dated 1st April, 1837, three notes, one of S. Fisher & White for $602 81, one of Fisher & White for $553 71, due 3d February, 1837, and one of Fisher & Johnson for $736 34, due 10th December, 1836, payable to Wm. M. Tileston & Co., and which are now for collection in Gordon, Campbell & Chandler's hands, are to be surrendered.

Upon the receipt of bills from the same parties, of this date, for $411 19 at 3 months, $419 26 at 6 months, $427 31 at 9 months, and $435 38 at 12 months, a note of W. P. Fisher & Co. is to be surrendered; this was given to T. P. & C. Norris & Co., or bearer, dated 21st January, 1834, due at 12 months.

And upon the receipt of a bill from the same parties for $466 60, due at 16th July, 1837, dated 1st April, 1837, a note of Halsey & Utter, due 16th June, 1835, given by Wm. P. Fisher & Co. to them for $426 60, is to be surrendered; bills have been prepared by Gordon, Campbell & Chandler for execution, and they are to be furnished to them at an early day, 1st April, 1837.

Subsequently to this, claims from Moses Wanzer, Baker, Johnson & Co., Rankin & Co., among others against Fisher, came to the hands of said law firm. In May the whole matter was arranged.

Bills were given according to this agreement for the debts of Tileston & Co. and Halsey & Co. Norris, Stoddard & Co., settled of H. & D. Parrish the claim of $1,471 $\frac{71}{100}$, and included a claim of their own, for which a draft for $2,592 $\frac{69}{100}$, due 1st April, 1838, was taken, upon which this defendant was principal endorser, and on which a judgment for the sum of $ was afterwards, the day of , recovered for $, and paid by this defendant.

The first bill for $5,075 $\frac{98}{100}$ was not given, and the second for $5,208 $\frac{98}{100}$ was given, but arranged otherwise, and by collections from the receipt. The remaining bills were given and transferred to the Bank of the United States of Pennsylvania.

At this time the said Fisher gave verbal as well as written instructions to the said firm to protect this defendant from the payment of the debts aforesaid, from the papers mentioned in that receipt. The date of that receipt is the date of the final settlement between that firm and Fisher.

This defendant says that the four drafts for $3,212 $\frac{88}{100}$, $3,389 $\frac{07}{100}$, $2,859, and $3,035 $\frac{69}{100}$, were settled by him from his own moneys, except $4,831 paid by collections from Fisher's property in October, 1838. The payments to Tileston & Co. were entirely made by this defendant.

Further answering this defendant says, that he endorsed for said Fisher & Johnson a bill, dated 1st March, 1837, for $10,000, due at 60 days, which was protested, and upon which the whole was paid by this defendant in part with moneys derived from Fisher's property and the remainder of his own. He attaches the deed of trust given to protect him as a part of this answer.

This defendant further answering says, that the only credits his memory, information, or belief can furnish him with, are as follows:

Cash—Alabama money to pay Columbus judgments, ($5,000)—short by discount	$4,818 29
Fisher's residence	4,000 00
Sales of lots	825 00
Lot exchanged	100 00

Slaves sold	$1,100 00
Notes on myself	2,000 00
Persons not ascertained	1,000 00
Note of Dozier handed by G. C. & C.	600 00
Note handed over by G. C. & C.	325 00
Judgment against Hinkle	1,600 00
Other sums—about	200 00
	$16,558 28

This defendant states that John Fisher was wholly insolvent when these arrangements were made, and his insolvency became known shortly after he died in the early part of 1838. This defendant saw that he was very largely involved for him, for which he could reckon upon no assistance.

For further answer this defendant states, that he paid to Nelson Carleton & Co. a bill of exchange drawn by Fisher & Johnson, dated 8th March, 1837, due at 90 days, for $2,800, and which, when paid, amounted to $3,472 from interest and damages.

Further answering this defendant says, that he kept no minute accounts, so as to state when and from whom he received sums of money on Fisher's account. That the main items of collection he has stated with exactness, but smaller sums he cannot. That upon the principal and interest and damages he has lost at least twelve thousand dollars, and with the interest on a settlement his claim would be nearly double that sum, for which he has no security save the claims aforesaid.

This defendant says, that Wanzer's agents or assignees were informed of and looked to the securites in the hands of his attorneys for payment, approved of suits in his name, and were paid in the end from the securities, as he is informed and believes.

This defendant admits, that the control of this case and its whole management was given over to him by the attorneys aforesaid, but it was in compliance with a letter written to them by Fisher about the time of the deposite of the notes and also of verbal directions.

This defendant admits, that the plaintiff fills the character of administrator to Fisher. He admits a judgment has been rendered against him. He admits that he has no assignment from Wanzer, but his title rests upon the facts set forth.

This defendant wholly denies, that he has received indemnity from Fisher or elsewhere, but that upon a just account the estate of Fisher would owe him many thousands of dollars, upwards of $20,000.

1. To the interrogatory 1st he answers, that he does not know whether the note was Fisher's or Fisher & Johnson's, but it was in Fisher's hands, and he acted in the name of the firm, and it was placed in the law firm mentioned.

2, 3, 4, 5, 6, 7. The note never belonged absolutely to Wanzer. He had a note of Fisher & Johnson, the payment of which (with others) was provided for by the deposite of the notes specified in the receipts. Suit was brought in his name on this and other notes in the

receipt, and his debt has been fully paid. He has no claim on the judgment *on the judgment* in his name. He has not assigned this judgment, but this defendant claims by the terms of the first receipt and the subsequent written and verbal instructions of Fisher to the attorneys, G. C. & C. aforesaid.

This defendant does not know whether Wanzer instructed the form of the suit, but he knew, as this defendant is informed, of the arrangement for his benefit, and that suits were prosecuted on the notes; and that he received the amount of his note from the other notes. This defendant believes that Johnson has no interest in the effects of Fisher & Johnson.

8, 9, 10, 11, 12. This defendant called on Gordon, Campbell & Chandler, who informed him that the claims having a preference over his, on the notes specified in the receipt, had been paid, and surrendered the note of Dozier and moneys to him. He also states, that they gave an order to the clerk authorizing this defendant to do with the judgment (at his own costs) as he might wish.

The particular claim of this defendant, on this note, was derived from a letter written by Fisher, in Mobile, to the firm, at the instance of this defendant, to hold the balances in their hands after the payment of the debts particularly provided for the indemnity of this defendant.

The defendant says, that the bills specified in the memorandum of agreement signed by Gordon, Campbell & Chandler, and Fisher for himself and his firms, had been substantially executed, and that this defendant was the endorser on the whole; and that Fisher gave particular instructions, at this defendant's request, on this subject to the said firm. That Wm. P. Fisher, the first administrator of John Fisher, knew of and recognised the instructions and this defendant's rights, and that under them all the measures in the cause have been taken of which the plaintiff complains.

This defendant says, he has not released Long, nor received any settlement, payment, or satisfaction from him.

This defendant sets forth in the body of his answer the bills paid by him, after protest accepted, for the accommodation of Fisher & Johnson, or more particularly John Fisher, and on which all other parties were for their accommodation.

That the bill of the Bank of Columbus described in the deed of trust; the bills to the Bank of the U. S., four in number, damages and costs thereon; the debt to Tileston & Co., Norris & Co., Nelson, Carleton & Co., were paid by the defendant. That he received less than seventeen thousand dollars from Fisher's property altogether.

He states the items in the body of his answer, in so far as he can remember, and that he is confident that Fisher is in his debt the amount he has set forth.

And without all the matters and things not particularly answered may be true, and having fully answered, the defendant prays to be hence dismissed with costs.

CAMPBELL & CHANDLER, *For def't.*

Affidavit.

THE STATE OF ALABAMA,
Dallas county.

Before me, a justice of the peace for said county, came John S. Hunter, who makes oath that this answer is true in substance and matter of fact.

J. S. HUNTER.

Sworn to and subscribed, before me, 15th day of October, 1850.

THOS. U. ROBINSON, *J. P.*

Exhibit referred to in Hunter's answer.

Deed of trust.

STATE OF ALABAMA,
Lowndes county.

Whereas at divers times in the year eighteen hundred and thirty-seven, prior to the date of these presents, certain individuals, as hereinafter mentioned, as drawers, acceptors, endorsers, and securities on various bills of exchange and negotiable paper, have become liable for the amount of said bills or negotiable paper, which were for my sole use and benefit, and are of the following description, viz: One drawn by Fisher and Johnson, dated 29 March, at six months, accepted by John A. Elmore, and endorsed by John S. Hunter and Benjamin F. Dozier, for two thousand two hundred and eighty $\frac{98}{100}$ dollars; one other drawn by Fisher & White, at six months, accepted by, and endorsed by the same parties, for three thousand and thirty-five $\frac{60}{100}$ dollars, dated as last above mentioned; one other drawn by Fisher and White, at nine months, dated as above, for three thousand two hundred and twelve $\frac{88}{100}$ dollars, accepted by John A. Elmore, and endorsed by John S. Hunter and Benjamin F. Dozier; two others for about twenty-eight hundred or three thousand dollars each, due the first day of April, eighteen hundred and thirty-eight, each accepted by John A. Elmore, endorsed by John S. Hunter and George Givham, and drawn by Fisher and Johnson; one other due the Bank of Columbus, dated the first of March, at sixty days, for ten thousand dollars, accepted by John A. Elmore, and endorsed by John S. Hunter and Johnson & Dozier, drawn by Fisher & Johnson.

Now know ye, that I, John Fisher, in consideration of the above, as also for the sum of one dollar, to me in hand paid by the said Elmore, Hunter, Dozier, Givham, and Johnson & Dozier, have bargained and sold, and by these presents do bargain, sell, and deliver, unto the said John A. Elmore, John S. Hunter, Benjamin F. Dozier, George Givham, and Johnson & Dozier, the following named negroes, viz: Violet, Amanda, Maria, Amy, and Mary; to have and to hold the said negroes, with their issue and increase, unto the said John A. Elmore, John S. Hunter, Benjamin F. Johnson, George Givham, and

Johnson & Dozier, their heirs, executors, administrators, and assigns forever; and for the like consideration as above expressed, I, the said John Fisher, have granted, bargained, and sold, and by these presents *have granted, bargained, and sold, and by these presents* do grant, bargain, and sell, unto the said John A. Elmore, John S. Hunter, Benjamin F. Dozier, George Givham, and Johnson & Dozier, the following lots or parcels of land, situate in the town of Hayneville, viz: One known and designated, at the first sale of lots in said town made by the judge of the county court, and commissioners of roads and revenue of said county, as lot number fourteen, (14,) containing ninety feet square, more or less. Also one other lot, known and designated in the plan of said town as lot number twenty-nine (29.) Also one other lot, described in said plan of the town as lot number nine, (9,) containing ninety feet square. Also one other lot, bounded as follows, viz: Commencing on the northwest corner of G. W. Esselman's lot, on Turkina street, and running *and running* west on the south boundary line of said street the distance of seventy yards; thence due south to Lafayette street sixty yards, more or less; thence east thirty-five yards; thence north five yards; thence east thirty yards to said Esselman's lot; and thence north to the beginning: containing three-fourths of an acre, more or less. Also one other lot, bounded as follows, viz: Commencing on the north side of Lafayette street, west of the public square, at the southwest corner of lot number fourteen (14) mentioned above; thence running west along said Lafayette street seventy yards; thence north ninety feet; thence east the northwest corner of said lot fourteen (14;) thence south ninety feet to the beginning. To have and to hold the said granted premises to the said John A. Elmore, John S. Hunter, Benjamin F. Dozier, George Givham, and Johnson & Dozier, their heirs and assigns, their use and behoof forever. Provided always, nevertheless, and it is hereby agreed by and between the said parties, that if the said John Fisher, his heirs, executors, or administrators, shall well and truly pay, or cause to be paid, the said bills or negotiable paper, or by other lawful means shall save and keep harmless, and indemnify, and secure the said John A. Elmore, John S. Hunter, Benjamin F. Dozier, George Givham, and Johnson and Dozier, their heirs, executors, and administrators, from the payment of said bills or negotiable paper, or any part thereof; and all costs, damages, and charges incurred by them aforesaid, as acceptors, endorsers, or securities as aforesaid, then, and from thenceforth, this deed of bargain and sale, and this grant, and all and every clause, article, and thing therein contained, shall cease, determine, and be utterly void and of none effect, any thing herein contained to the contrary notwithstanding. And it is hereby further agreed and declared, by and between the said parties, and the said John Fisher doth for himself, his heirs, executors, and administrators, covenant and agree to and with the bargainees and grantees, their executors, administrators, and assigns, by these presents, that if the said bargainees and grantees, their executors, or either of them, shall at any time suffer

loss by reason of said acceptances, endorsements, or securityships aforesaid, bills or negotiable papers, that then, and in that case, it shall and may be lawful for the said bargainees and grantees, their executors, administrators, attorneys, or agents, or either of them, at any time thereafter, peaceably and quietly to take possession of said negroes and their increase, and said lots of land, and the same to sell and dispose of, either at private sale, informing said John Fisher, his executors, or administrators, of said intended sale, and the terms thereof, previously to the ratification of the sale; or to sell the said negroes and lots at public outcry, to the highest bidder, before the court-house door of said county, giving sixty days notice of the same in some public newspaper, on such terms as may best secure and keep harmless the said bargainees and grantees, their heirs, executors, and administrators, returning the overplus, if any, after a complete indemnification of all losses and charges by reason of said acceptances, endorsements, or securityships, to the said John Fisher, his executors, administrators, or assigns.

In witness whereof, I, the said John Fisher, have hereunto set my hand and seal, third day of October, eighteen hundred and thirty-seven.

JOHN FISHER. [SEAL.]

Attest—GEO. D. FISHER,
JAMES W. BLACKWELL.

Certificate.

THE STATE OF ALABAMA,
Lowndes county.

I, John Varner, clerk of the county court of said county, do hereby certify, that on this day, John Fisher, who has signed and sealed the attached deed, personally appeared before me, and acknowledged that he signed, sealed and delivered the attached deed on the day and date therein mentioned for the purposes therein contained.

Given under my hand, at office, this 3d day of October, 1837.

JOHN VARNER,
Cl'k Co. C., L. C.

Filed 21st Oct., 1850.

JOHN FITTS, *Cl'k.*

Replication to the answer of John S. Hunter.

Circuit court of the United States, for the southern district of Alabama.

MORGAN B. HINKLE, complainant,
vs.
MOSES WANZER, JOHN S. HUNTER and others, defendants.

And the said Moses B. Hinkle, repliant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifest errors, uncertainties and insufficiencies

of the answer of the defendant, John S. Hunter, to the bill of complaint, for replication thereto saith, that he doth and will aver, maintain and prove his said bill to be true, certain and sufficient in law to be answered unto by the said defendant, and that the answer of the said defendant is uncertain, evasive, untrue and insufficient in the law to be replied unto by this repliant, without that, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain and prove as this honorable court may direct, and humbly prays as in and by his said bill he hath already prayed.

W. G. JONES,
Sol'r for compl't.

Filed 9th Nov'r, 1850.

JOHN FITTS, *Cl'k.*

Decree pro confesso against Wanzer and Johnson.

At rules held in the clerk's office on the first Monday of November, A. D. 1850.

MORGAN B. HINKLE
vs.
MOSES WANZER, JAMES F. JOHNSON, JOHN S. HUNTER.

This day came the complainant, by his solicitors, and it appearing that the process of subpœna issued in this case has been duly executed on the defendants, Wanzer and Johnson, by service on Campbell and Chandler, attorneys for said defendants, and the said defendants having failed to answer the bill of complaint within the time prescribed by the rules of this court: On motion of said complainant's solicitors, it is ordered that the said bill be taken as confessed, and that the cause be set down for hearing ex parte as to the said defendants, Wanzer and Johnson.

JOHN FITTS, *Clerk.*

Minutes.

At a term of said court begun and held on the 4th Monday in December, A D. 1850, his honor, John Gayle, judge thereof, presiding; to wit, on the 11th day of January, 1851, that being a day of said term, the following order was made in this cause, to wit:

Continuance.

MORGAN B. HINKLE
vs.
MOSES WANZER et al.

By consent of parties by their counsel: It is ordered by the court that this cause be continued.

Agreement of counsel.

In the circuit court of the United States, for the southern district of Alabama.

MORGAN B. HINKLE
vs.
MOSES WANZER et al. } In chancery.

In this case the parties, by their solicitors, consent that the judge of the court may make an order, enlarging the time for taking testimony until the first day of the next regular term of the court.

W. G. JONES, *Sol'r for pl'ff.*
CAMPBELL & CHANDLER, *Sol'rs for def'ts.*

February 18, 1851.

In the circuit court of the United States, for the southern district of Alabama.

MORGAN B. HINKLE
vs.
MOSES WANZER et al. } In chancery.

In this cause, on motion of the plaintiff and for special cause shown, and by consent of parties, it is ordered by the honorable John Gayle, one of the judges of said court, at chambers, that the time for taking testimony in this cause be enlarged until the first day of the next regular term of this court.

JOHN GAYLE, *Judge.*

Mobile, February, 1851.
Filed 19th Feb'y, 1851.

JOHN FITTS, *Cl'k.*

Notice of interrogatories filed.

In the circuit court of the United States, for the southern district of Alabama.

MORGAN B. HINKLE
vs.
MOSES WANZER, JOHN S. HUNTER, JAMES F. JOHNSON. } In chancery.

To Messrs. Campbell & Chandler, Solicitors for the defendants.

Take notice, that ten days after the date hereof, a commission or commissions will issue from the office of the clerk of said court, on interrogatories filed, to take the depositions of Nathan Cook, Archibald Gilchrist, Wm. S. Pennington, James M. Boling, John M. Sadler, Mrs. Mary Long, and Wm. P. Fisher, witnesses for the complainant in the above entitled cause pending in said court.

Attest:
Feb'y 24, 1851.

JOHN FITTS, *Clerk.*

Marshal's return.

Rec'd Feb'y 24, 1851, and on same day executed this notice upon Campbell & Chandler, att'ys for def'ts, and handed them a copy.

C. BINGHAM, *U. S. marshal.*

Complainant's testimony.

In the circuit court of the United States, for the southern district of Alabama.

MORGAN B. HINKLE
vs.
MOSES B. WANZER, JAMES F. JOHNSON, JOHN S. HUNTER. } In chancery.

Interrogatories to Wm. T. Pennington.

Interrogatories to be propounded to William T. Pennington, a witness to be produced, sworn and examined on behalf of the plaintiff in the above entitled cause, now pending in the circuit court of the United States, for the southern district of Alabama:

Interrogatory 1. Do you know the parties to this suit, or either of them and which of them? Did you know the late John Fisher in his lifetime? Was or was not the said John Fisher, or had he not been, a partner in the several mercantile firms of Fisher & Johnson, Fisher & White, or Fisher, White & Co.? And had he or not, prior to or at the time of his death, the possession and control, or the right to the effects of the said several firms?

Interrogatory 2. Did you or not do business for the said Fisher, or the said firms, or either and which of them, and during what time, and in what capacity; what opportunities had you of acquiring a knowledge of his business and affairs, and had you or not any accurate knowledge of his business and affairs prior to and at the time of his death?

Interrogatory 3. Where did the said John Fisher reside and carry on business prior to and at the time of his death; where did the defendant, John S. Hunter, reside and carry on business, and what business did he carry on whilst you knew him; when or about what time did the said John Fisher die?

Interrogatory 4. Do you or not know of the said Hunter having received from the said Fisher, in his lifetime, any notes, bills, accounts, or other papers for the payment of money; if so, state as fully and particularly as you can what notes, bills, accounts, and other papers were so received by the said Hunter, and as nearly as you can the amount of the same; on what account or for what purpose did he receive the same; were they or any of them, and which of them, so received by the said Hunter as indemnity or collateral security for any purpose, and for what purpose? State as fully and particularly as you can the names of the persons against whom such notes, bills, accounts, and other papers existed; specifying, as far as you can, the amounts due on each such person, and what was the condition of each such

person as to solvency or responsibility, and all that you may know respecting the said notes, bills, accounts, and other papers.

Interrogatory 5. State if you know how much the said Hunter owed the said Fisher, or either and which of the firms of which said Fisher was a partner, or about how much the said Hunter so owed, either before or at the time of the death of the said Fisher. If such indebtedness was on notes or on open accounts, state as fully and particularly as you can the amount or about the amount so owing, and how it was due; what became of the said notes, accounts, or other evidences of debts against the said Hunter; did or did not the said Hunter get possession of the same or some, and which of them; when or about what time, and where, did the said Hunter so get possession of them, and on what account or for what purpose?

Interrogatory 6. State whether or not you and the said Hunter, after the death of the said Fisher, looked over and examined the papers of the said Fisher, or papers which were in possession of the said Fisher, or in your possession as said Fisher's agent; and did or did not the said Hunter, at or about that time, take or carry off any such papers; and if any, what papers were so taken; who were they on? State the number and amounts as particularly as you can. Were they or not taken as indemnity to the said Hunter; and if so, for what purpose of indemnity? Were there or not among the papers so taken any notes, accounts, or other evidences of debt against the said Hunter himself? If so, state the amounts of the same as accurately as you can. Was or was not this done by your permission or consent; how long after Fisher's death was this done, if at all; was it or not after said Fisher's death, and before any administration had been granted on his estate?

Interrogatory 7. Did you or not, after the death of the said Fisher, have any communication with the said Hunter as to the effect which the said Fisher's death would have on the said Hunter's interest, or to that effect; if so, when or about what time did such conversation take place; what did said Hunter say in that conversation on the subject referred to? Give his language as nearly as you can, and the substance of what he said on that subject.

Interrogatory 8. Did or did not the said Hunter, after the death of said Fisher, request you to leave the State of Alabama; if so, when or about what time was this done?

Interrogatory 9. Do you or not know of the said Hunter having had or received of the said Fisher in his lifetime, or his estate after his death, any other property, real or personal, or moneys or effects, as indemnity for liabilities the said Hunter was under for said Fisher? If so, state fully and particularly all you know about such property, moneys, or effects, and the value of the same.

Interrogatory 10. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the

subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

WM. G. JONES,
Sol'r for plaintiff.

Filed February 21, 1851. JOHN FITTS, *Clerk.*

Received 22d February, 1851, and on same day executed the same upon Campbell & Chandler, attorneys for defendants, and handed to them a copy.

C. BINGHAM, *U. S. M.*

Circuit court of the U. S.

Cross interrogatories for Wm. T. Pennington.

HINKLE, administrator,
vs.
HUNTER et al.

Cross interrogatories to Pennington.

1. If you state that any notes, bonds, bills, or property of any kind came to the possession of the defendant, Hunter, as indemnity or collateral security on account of Fisher's debts or the liabilities he had incurred for Fisher, please state exactly the notes, bills, bonds, and property so received and taken possession of by Hunter.

2. Do you know of any papers of the description above named, or any property or evidence of debt which had been assigned or set apart for Hunter by Fisher, subsequently taken or controlled by Fisher, or any person under Fisher's orders, or without Fisher's orders? Set forth those papers or property.

3. Do you know exactly what came to Hunter's possession; how do you know this? Describe the papers or property.

4. Do you know what become of those papers; were they collected by Hunter, or how were they disposed of?

5. If you say that Hunter owed Fisher money, answer in what manner he became indebted, and the amount of the indebtedness. How do you know that he was so indebted; what evidence did Fisher have of it?

6. State all that you may know that will benefit the defendants or any of them.

CAMPBELL & CHANDLER,
Defendant's attorneys.

Filed 27th February, 1851.

JOHN FITTS, *Clerk.*

UNITED STATES OF AMERICA.

Circuit court of the United States, for the fifth judicial circuit and southern district of Alabama.

Commission to take testimony of Pennington.

MORGAN B. HINKLE, administrator de bonis non of John Fisher, deceased,
vs.
MOSES WANZER, JAMES F. JOHNSON, and JOHN S. HUNTER.

To John W. Gregory, Benjamin H. Rogers, and Thomas Wartman, esqs., of the State of Virginia, greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you, or any one of you, full power and authority to examine William T. Pennington, of said State of Virginia, named in the direct and cross interrogatories hereunto attached, as witness in a cause pending in our said court, wherein Morgan B. Hinkle, *and* as administrator de bonis non of John Fisher, deceased, is complainant, and Moses Wanzer, James F. Johnson, and John S. Hunter are defendants:

And therefore we command you, or any one of you, that at such times and places as you shall appoint, you do cause the said William T. Pennington, a witness on the part of the complainant in said cause, to come before you, or either of you, and then and there examine on oath as a witness in the cause aforesaid. And that you or either of you do take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seals, or the seal of any one of you, into our said court with all convenient speed.

Witness the Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, [SEAL.] the second Monday of December, in the year of our Lord one thousand eight hundred and fifty.

Issued the seventh day of March, 1851.

Attest: JOHN FITTS,
Cl'k C. C., Sou. dis't Ala.

The appointment of commissioners is hereby confirmed this 7th March, 1851.

JOHN GAYLE,
Judge U. S. dist. courts for Ala.

Deposition of Pennington.

Answer to interrogatory 1st. I know all the parties to the suit, except Moses Wanzer. I knew the late John Fisher, in his lifetime; he was a partner in the several firms mentioned in the interrogatory; he had the control, possession and right to the effects of the firm of Fisher & Johnson; of the right or the control of the other firms at or about the time of his death, I am unable to say.

Answer to interrogatory 2d. I done business for said Fisher, in the firm of Fisher & White, at Lowndesboro', during the year 1835, as clerk. I also done business for him at Hayneville a part of the year 1837, and up to the time of his death in '38, which, I think, occurred either in January or February. I was engaged in settling and liquidating the accounts belonging to the firm of Fisher & Johnson, and that is the only opportunity I had of acquiring a knowledge of his affairs. As to having an accurate knowledge of his affairs, I did not; he was much disposed to keep his liabilities concealed.

Answer to interrogatory 3d. The said Fisher resided in Hayneville, Lowndes county, Alabama; carried on the mercantile business at that place for several years. Some 12 months prior to his death, sold his interest in the mercantile business, and was then engaged in closing up his old business. The defendant, John S. Hunter, also resided at the same place, and during my acquaintance with him, was a member of the bar. The said Fisher, I think, died in January or February, 1838.

Answer to interrogatory 4th. My memory does not serve me distinctly enough to answer positively any of those questions asked in the above interrogatory; I only know that Hunter & Fisher were intimate friends, and that Hunter was in the habit of endorsing for Fisher.

Answer to interrogatory 5th. I do not remember distinctly enough to say whether Hunter was owing Fisher or not, but suppose he may have owed a merchandise account to the firm of Fisher & Johnson; if he got possession of any of Fisher's papers I have no recollection of such papers, and no recollection of the fact that he did get possession of them.

Answer to interrogatory 6th. I do not remember that Hunter and myself did or did not look over the papers of Fisher after his death; if, however, such was done, and he carried any papers off, it was done without my consent. I have no recollection of it; I only know that I gave up the papers to William P. Fisher about the time he administered on the estate of John Fisher.

Answer to interrogatory 7th. If Hunter and myself had any conversation in reference to the effect *of* the death of Fisher might have on his, the said Hunter's interest, it has escaped my memory.

Answer to interrogatory 8th. Hunter never at any time requested me to leave the State of Alabama, neither did I ever hear of such a wish as coming from Hunter or any one else. I think it was generally known amongst my friends in Alabama before Fisher's death, that I intended leaving the State that spring; done so, and returned again that fall, for the purpose of closing my own business; spent a year there, and during that time I have no recollection of ever hearing Hunter refer either to Fisher or his business.

Answer to interrogatory 9th. I only know that Hunter and Fisher were intimate friends, and am now under the impression that Hunter incurred liabilities upon himself by endorsing for Fisher. I infer so from recollecting a restlessness upon the part of Hunter just before and

1820.

about the time of his, Fisher's, death, but of a sudden he became quiet; whether it was by receiving money, papers, bonds, bills or property of any description that reconciled him, I cannot say.

Answer to interrogatory 10th. It has now been 13 years since I done business for Fisher, and not knowing that I should ever become a witness, I did not charge my memory with any thing; and the only evidence that I would have myself of any of his affairs, would be by reference to his books.

W. T. PENNINGTON.

MECHLENBURG COUNTY, VA.

The foregoing deposition *were* subscribed and sworn to before me, this 25th day of March, 1851.

THOMAS WARTMAN, *J. P.* [SEAL.]

Answer to cross interrogatory 1st. I have no recollection of any papers or property coming into the hands of Hunter to protect him against the liabilities he had incurred by endorsing *by* Fisher.

Answer to cross interrogatory 2d. I recollect no papers having been set apart by Fisher, or by Fisher's orders, for Hunter's benefit.

Answer to cross interrogatory 3d. I do not know what came into the hands of Hunter.

Answer to cross interrogatory 4th. I cannot say that Hunter had any papers in his possession of Fisher's; if so, I do not know what became of them.

Answer to cross interrogatory 5th. I only suppose that, as Fisher was merchandizing at Hayneville, he was owing merchandize account. Whether the account had been bonded or not, I do not now recollect, and whether he ever paid it I cannot say.

Answer to cross interrogatory 6th. Not knowing that I should ever be called on as witness in the case, I did not charge my memory with any of Fisher's business, therefore I do not know that I know any thing that will benefit any of the parties concerned.

W. T. PENNINGTON.

STATE OF VIRGINIA,
Mechlenburg county, to wit.

The above deposition *were* subscribed and sworn to before me, this 25th day of March, 1851.

THOMAS WARTMAN, *J. P.* [SEAL.]

Interrogatories to J. M. Boling.

In the circuit court of the United States, for the southern district of Alabama.—In chancery.

MORGAN B. HINKLE
vs.
MOSES WANZER, James F. Johnson, John S. Hunter.

Interrogatories to be propounded to James M. Boling, a witness to be produced, sworn and examined on behalf of the plaintiff in the above entitled cause.

Interrogatory 1. Do you know any, and which, of the parties to the above entitled cause? Did you know the late John Fisher in his lifetime? Where did he reside and carry on business? And when, or about what time, did he die?

Interrogatory 2. Was or was not the said John Fisher a partner, or had he not been a partner in the mercantile firms of Fisher & Johnson, Fisher & White, and Fisher, White & Co.; and was he or not entitled to, or had interest in or control over, the effects of said several firms, or either and which of them?

Interrogatory 3. Do you or not know of the defendant, Hunter, having received or obtained from the said John Fisher, in his lifetime, or his estate, or his administrator after his death, any notes, bonds, bills of exchange, accounts or other evidences of debt, or claims of any sort, belonging to the said John Fisher, or either of said firms, or the estate of the said Fisher? If yea, please state as fully and particularly as you can each and every such note, bond, bill of exchange, account, claim or other evidence of debt, with the amounts and names of persons against whom they were. Please make a statement of the same and append it to your deposition, as part of your answer to this interrogatory.

Interrogatory 4. Do you or not know of the said John S. Hunter having received or obtained any estate or property, real or personal, belonging to the said John Fisher or his estate, on any and what account, or for what purpose? If so, state fully and particularly all such property so received or obtained by the said Hunter, and its value, and on what account, or for what purpose it was so received. And what was done with such property; if it was sold, for how much was it sold, and who received or got the benefit of the proceeds of such sales? And what amount of money was realized by said Hunter from the same? State fully all you know on this subject.

Interrogatory 5th. Did you or not ever collect any money on a judgment in Conecuh county against William A. Bell in favor of said Fisher, or any firm of which he was a partner, or of any person or persons as administrator of John Porter, deceased? If so, state fully all you know about such judgment. For what amount was it; what amount was collected on

it; to whom did you pay over the money, and what amount was so paid over by you? If it was paid to said Hunter, please state how and on what account, or by what authority was it claimed by said Hunter; and on what was said judgment founded; and when or about what time was such payment made?

Interrogatory 6th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this case? If yea, set forth the same fully and at large in your answer.

WM. G. JONES, *Sol'r for pl'ff.*

Filed, February 21, 1851.

JOHN FITTS, *Clerk.*

Marshal's return.

Received 22d February, 1851, and on same day executed the same upon Campbell & Chandler, attorneys for defendants, and handed them a copy.

C. BINGHAM, *U. S. M.*

Cross interrogatories to James M. Boling.

Cross interrogatories to James M. Boling.

1. The witness is requested to answer fully and at large to all the questions of the plaintiff, setting forth the facts known to him, and the facts ascertained by him from others, and showing who gave the information.

2. Please state what sums of money you know J. S. Hunter to have received for his protection; also the extent of his liabilities for Fisher, or any firm of which Fisher was a member.

3. Please state what moneys were paid by John S. Hunter on account of said Fisher, or the firms of which he was a member, and when he paid them, and on what account.

CAMPBELL & CHANDLER, *Fbr defendants.*

A copy. Attest:

JOHN FITTS, *Clerk.*

Commission to take Boling's deposition.

UNITED STATES OF AMERICA.

Circuit court of the United States, for the fifth judicial circuit and southern district of Alabama.

MORGAN B. HINKLE, as administrator de bonis non of John Fisher, deceased,
vs.
MOSES WANZER, JAMES F. JOHNSON & JOHN S. HUNTER.

To John N. Smith, Isaac B. Stone, and Milton J. Saffold, of Lowndes county, State of Alabama, esqs., greeting:

Know ye, that we, in confidence of your prudence and fidelity, have

appointed you, and by these presents do give you, or any one of you, full power and authority to examine James M. Bolling, of said county and State, and named in the direct and cross interrogatories hereunto attached, as witness in a cause pending in our said court, wherein Morgan B. Hinkle as administrator de bonis non of John Fisher, deceased, is complainant, and Moses Wanzer, James F. Johnson, and John S. Hunter, are defendants: And therefore we command you, or any one of you, that at such times and places as you may appoint, you do cause the said James M. Bolling, a witness on the part of the complainant in said cause, to come before you, or either of you, and then and there examine him on oath as a witness in the cause aforesaid; and that you, or either of you, do take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seals, or the seal of any one of you, into our said circuit court, with all convenient speed.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, the second Monday of December, in the year of our Lord one thousand eight hundred and fifty.

[SEAL.]

Issued the seventh day of March, 1851.

Attest: JOHN FITTS,
Clerk C. C. Sou. dist., Alabama.

The appointment of commissioners is hereby confirmed, this 7th March, 1851.

JOHN GAYLE,
Judge U. S. district court for Alabama.

Deposition of witness sworn and examined this 26th day of March, A. D. 1851, under and by virtue of a commission issued out of the circuit court of the United States, for the southern district of the State of Alabama, in a certain cause therein pending between Morgan B. Hinkle, complainant, and Moses Wanzer, John S. Hunter and James F. Johnson, defendants.

Boling's deposition.

Col. J. M. Boling being sworn, says as follows:

To the first interrogatory he says, he knows Morgan B. Hinkle and John S. Hunter; does not know the other parties to the suit. He says he did not know John Fisher in his lifetime; he only knows from information where he resided and did business; from his information on this subject he resided in Hayneville, Alabama, and did business there; does not know when he died; it was before witness came to reside at Hayneville.

To the second interrogatory he says, he knows nothing of the several firms named in this interrogatory, except what he has learned from the records, and from information; none of them have existed since witness has been in Hayneville. Fisher and White were dead previous to the spring of 1841, (the time witness removed to Lowndes county,)

as he is informed, and Johnson was not here; he understands he had removed.

To the third interrogatory he says, he does not know of John S. Hunter having received or obtained from John Fisher in his lifetime, or his estate, or his administrator after his death, any notes, bonds, bills of exchange, accounts or other evidences of debt, or claims of any sort, belonging to said John Fisher or either of said firms; these are things about which witness has no knowledge.

To the fourth interrogatory he says, he has in his possession a deed from John S. Hunter to Thomas C. Evans, for a house and lot; the amount specified in said deed as having been received for the same is four thousand dollars. Witness has no personal knowledge of this transaction, except the making of the deed; he does not know how the money was paid, or how appropriated; he has been informed this property once belonged to John Fisher, and that it was assigned to Judge Hunter to indemnify him for some purpose, but he does not know this of his own knowledge; he has heard of other property being assigned, &c., but does not know it.

To the fifth interrogatory he says, he collected in Conecuh county some money on a judgment against William A. Bell. The suit was in the name of Long & Porter as executors, but of whom they were executors witness does not recollect. The suit was on a note, but for what amount, or its date, witness does not now recollect; the claim was received through Hunter & Cook, (John S. Hunter & N. Cook,) who were then practising law at Hayneville, Alabama, and witness was then practising law in Conecuh county. Witness's best recollection is, that the writ was issued by Hunter & Cook, and sent to witness with request that he would attend to the case for them. The money was collected on the judgment and paid over to John S. Hunter, on the 14th of November, 1838, at a term of Wilcox circuit court. A copy of receipt and statement of the case is here appended and marked A; how Hunter & Cook received the note, and what was done with the money, witness does not know, nor has he ever heard either of them say; this is all he knows about this transaction. The amount paid was $1047 66; it must have been received by Judge Hunter as attorney in the case, as it appears from the receipt he received the tax fee.

To the sixth interrogatory he says, he knows of nothing further that he is aware of, that will benefit the parties to this suit.

J. M. BOLING.

To the first cross interrogatory he says, he has answered the direct interrogatories as fully as he knows how, except as to the names of persons who gave him information as to property assigned to John S. Hunter by Fisher. He has heard N. Cook, esq., and Doct. M. G. Gilmer speak of property being assigned, &c.

To the second cross interrogatory he says, he knows nothing about the amount of money John S. Hunter received for his protection, unless the money received from Bell was for that purpose, which witness does not know, and unless the money received for the house and lot

referred to was for that purpose. He knows nothing of the extent of his liabilities for Fisher, or for any firm of which Fisher was a member.

To the third cross interrogatory he says, he does not know what moneys were paid by John S. Hunter on account of said Fisher, or for the firms of which he was a member; neither does he know when he paid them, nor on what account.

J. M. BOLING.

Examination taken, reduced to writing, sworn to and subscribed, this 26th day of March, A. D. 1851, before me. As witness my hand and seal, March 26, 1851.

J. B. STONE, [SEAL.]
Commissioner.

Receipt marked A, attached to Boling's deposition.—Exhibit attached to deposition.

Conecuh circuit court, March term, 1838.

LONG & PORTER, ex'rs,
vs.
WILLIAM A. BELL. } "A."

Judgment - - - - - - -	$994 66
Int. - - - - - - -	47 00
Tax fee - - - - - - -	6 00
	$1,047 66

The 14th Nov., 1838, rec'd the above of J. M. Boling.
(Signed) HUNTER & COOK.

Interrogatories to Mary Long.

In chancery.—In the circuit court of the United States, for the southern district of Alabama.

MORGAN B. HINKLE
vs.
MOSES WANZER, James F. Johnson, and John S. Hunter.

Interrogatories to be propounded to Mrs. Mary Long, a witness to be sworn and examined on behalf of the plaintiff in the above entitled cause.

Interrogatory 1. Do you know the parties to this cause, or either and which of them? Do you know the defendant, John S. Hunter? Did you know the late John Fisher in his lifetime?

Interrogatory 2. Did you know the late Thomas Long? What connection existed between him and you? When, or about what time did

he die? Where did he reside prior to and at the time of his death? Has there, or not, been any administration on his estate? If yea, who administered on his estate? Who had possession and control of his papers after his death? In whose possession have his papers been since his death, up to the present time?

Interrogatory 3. Are you acquainted with the handwriting of the defendant, John S. Hunter? During the lifetime of the said Thomas Long, did you, or not, ever see in his possession a receipt in the handwriting of the said John S. Hunter, or signed with his name in his handwriting to the said Thomas Long, for any purpose, or in relation to any matters of business? Is, or is not, the said receipt now among the papers of the said Thomas Long, deceased, or in your possession? If yea, please attach it to your answer. If it is not, then please state whether you have, or have not, ever looked for the said receipt among the papers of the said Thomas Long; and if so, whether you found the same or not? What has become of the said receipt? Has it, or not, been lost, or mislaid, or destroyed?

Interrogatory 4. Please state the tenor, or the substance and effect of the said receipt as fully and particularly as you can? What was it in relation to? When, or about what time, did you first see it? When, or about what time, was it dated? When, or about what time, did you first see it? By whom did it purport to be signed, and in whose handwriting was the signature? Was it, or not, a receipt for or against any debt or judgment; and if so, for what debt or judgment? State fully all you know in relation to it.

Interrogatory 5. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this case? If yea, set forth the same fully and at large in your answer.

WM. G. JONES,
Sol'r for pl'ff.

Filed Feb'y 21, 1851. JOHN FITTS, *Clerk.*

Marshal's return.

Rec'd 22d Feb'y, 1851, and on same day executed the same upon Campbell & Chandler, att'ys for def'ts, and handed them a copy.

C. BINGHAM, *U. S. M.*

Cross interrogatories to Mary Long.

1. Please state whether the defendant, Hunter, was not a surety for your husband, the late Thomas Long, in the branch of the Bank of the State of Alabama, at Montgomery; if so, please state for what amount; when was he the surety?

2. Did John S. Hunter pay the debt due to the bank, and for what amount, and at what time?

3. If you have any receipt, please state when you found it. Did you

see John S. Hunter sign it? Did you ever see him write, or do you know his handwriting? How did you acquire the knowledge of his handwriting?

4. If you have not the receipt you refer to, what has become of it? Did you know Judge Hunter's handwriting? How do you know that the receipt you testify of was given to him? Please make out a copy of it, if you have not the original.

CAMPBELL & CHANDLER, *for def't.*

Filed Feb'y 27, 1851. JOHN FITTS, *Clerk.*

Commission to take Mary Long's testimony.

UNITED STATES OF AMERICA.

Circuit court of the United States, for the fifth judicial circuit and southern district of Alabama.

MORGAN B. HINKLE, administrator of John Fisher, deceased,
vs.
MOSES WANZER, James F. Johnson, and John S. Hunter.

To John N. Smith, Anguish M. Simmons, and George W. Robinson, esqrs., of Lowndes county, State of Alabama, greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you, or any one of you, full power and authority to examine Mrs. Mary Long, of said county and State, the witness named in the interrogatories and cross interrogatories hereunto attached, in a cause pending in our said court, wherein Morgan B. Hinkle, and as administrator de bonis non of John Fisher, deceased, is complainant, and Moses Wanzer, James F. Johnson and John S. Hunter, are defendants. And therefore we command you, or any one of you, that at such times and places as you shall appoint, you do cause the said Mary Long, a witness on the part of the complainant in said cause, to come before you, or either of you, and then and there examine her on oath as a witness in the cause aforesaid. And that you, or either of you, do take such examination, and reduce the same into writing, and return the same annexed to this writ, closed up under your seals, or the seal of any one of you, into our said circuit court, with all convenient speed. Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, the second Monday of December, in the [SEAL.] year of our Lord one thousand eight hundred and fifty. Issued the seventh day of March, 1851.

Attest: JOHN FITTS,
Clerk C. C. sou. dist. Ala.

The appointment of commissioners is hereby confirmed, this 7th March, 1851.

JOHN GAYLE,
Judge U. S. dist. court for Ala.

Deposition of Mary Long.

Deposition of Mary M. Long, sworn and examined at Mt. Willing, on the 26th day of March, A. D. 1851, under and by virtue of a commission issued out of the United States circuit court, at Mobile, Alabama, in a certain cause pending, wherein Morgan B. Hinkle, administrator of the estate of John Fisher, is plaintiff, and Moses Wanzer, James F. Johnson and John S. Hunter, defendants, being duly sworn and examined on the part of the plaintiff, deposeth and saith as follows:

To the 1st interrogatory she saith: I did and do know all the parties to said suit, except Moses Wanzer.

To the 2d interrogatory she saith: Thomas Long was my husband; died the 16th Jan'y, 1844; he had resided a year or two at Selma, where he kept a tavern previous to moving to Mt. Willing, in Lowndes county, where lived up to his death; there has been no administration on his estate.

To the 3d interrogatory she saith: I am acquainted with the handwriting of John S. Hunter; I did see a receipt in the possession of Thos. Long, signed in the handwriting of John S. Hunter; I have looked for the receipt but cannot find it; it is not in my possession, nor among the few papers that I have of Thos. Long's, and of course it is either lost or mislaid, or at least it is not in my possession.

To the 4th interrogatory she saith: The receipt purported to be in full satisfaction for a judgment obtained in *in* the circuit court of the United States, at Mobile, Alabama, in favor of Moses Wanzer against Thomas Long and Morgan B. Hinkle, and signed by John S. Hunter, in his own handwriting, and dated sometime in October, 1841 or 1842, and I believe in October, 1841.

To the 5th interrogatory she saith: I can add but little else to the matter. I do know, and here unequivocally state it to be the fact, that the judgment, Moses Wanzer against Thos. Long and M. B. Hinkle, was paid by Thos. Long, as it was Mr. Long's debt and Hinkle security; Mr. Long's embarrassed situation caused me to know more of his business than I should otherwise have known; this debt now in judgment was paid and discharged by Mr. Long in Selma, about the time referred to in the 4th interrogatory; if my memory serves me, debts and claims on other persons *which* had been given to Judge Hunter previous to the time above mentioned for the purpose of collecting and paying on this judgment; and at the time above stated, a balance was paid by Thos. Long to Judge Hunter in cash, which fully paid the whole amount, and a receipt executed the same time; I can state nothing more that I remember.

M. M. LONG.

To the 1st cross interrogatory she saith: I have no recollection of his being the surety of Thos. Long at any time.

To the 2d cross interrogatory she saith: I do not know.

To the 3d cross interrogatory she saith: I have answered this fully in the 3d direct interrogatory; I do not recollect of having seen Hunter sign the receipt; I know the handwriting of Judge Hunter from seeing a great deal of his writing, and think I have seen him write often.

To the 4th cross interrogatory she saith: I have stated that it must have been lost, in my answer to the 3d direct interrogatory; I stated that I did; when I saw the receipt it was in the possession of Mr. Long, at Selma, at the date referred to in my answer to the 4th direct interrogatory; I cannot give a fuller or further description of the receipt than I did in my answer to the 4th direct interrogatory.

M. M. LONG.

Commissioner's certificate.

The foregoing evidence of the witness was taken down under oath, duly administered by me; the same was correctly and audibly read over to the witness and approved by her, and subscribed at a time and place appointed by me. Witness my hand and seal, this 26th March, 1851.

ANGUISH M. SIMMONS,
Commissioner.

Interrogatories to A. Harrison, B. Harrison and E. H. Cook.

MORGAN B. HINKLE
vs.
MOSES WANZER, John S. Hunter et al. } In chancery.

Interrogatories to be propounded to Alfred Harrison, Benjamin Harrison and Edward H. Cook, witnesses on behalf of the plaintiff in the above entitled cause, now pending in the circuit court of the United States for the 5th judicial circuit and southern district of Alabama.

Interrogatory 1. Were you or not acquainted with Thomas Long, now deceased, late of Lowndes county, Alabama, in his lifetime? When or about what time did he die?

Interrogatory 2. What offices have you held, or do you now hold, in Lowndes county? Have you or not had any and what opportunities of knowing the pecuniary situation of said Long in his lifetime and at the time of his death?

Interrogatory 3. Was or was not the said Long insolvent before and at the time of his death? State any and all facts and circumstances within your knowledge tending to show that the said Long was insolvent before and at the time of his death.

Interrogatory 4. Was or was not the said Long notoriously insolvent, or generally reputed to be insolvent at the time of his death?

Interrogatory 5. In what county of Alabama did said Long reside at the time of his death?

Interrogatory 5. What office do you now hold in Lowndes county, Alabama? Have you or not had charge and custody of the records of the court of probate of said county, and also of the records of the late

orphans' court of said county? If so, have you or not examined said records, and state whether any letters of probate or of administration have or have not been granted in said county on the estate of the said Long?

Interrogatory 6. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause; if yea, set forth the same fully and at large in your answer.

WM. G. JONES,
Solicitor for plaintiff.

Filed 24th November, 1851.

JOHN FITTS, *Clerk.*

Marshal's return.

Received, November 26, 1851, and on the 27th November executed the same upon Messrs. Campbell and Chandler, and handed them a copy of the within.

CHAS. BINGHAM,
U. S. marshal.

Commission to take testimony of Harrisons and Cook.

UNITED STATES OF AMERICA.

MORGAN B. HINKLE, as administrator, &c.
vs.
MOSES WANZER et al.

Circuit court of the United States, for the fifth judicial circuit and southern district of Alabama—To Isaac B. Stone, William H. Crocheron and Samuel P. Nesmith, esqrs., greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you, or any one of you, full power and authority to examine Alfred Harrison, Benjamin Harrison and Edward H. Cook, as witnesses in a cause pending in our said court, wherein Morgan B. Hinkle and as administrator, &c., is plaintiff, and Moses Wanzer, John S. Hunter and James F. Johnson are defendants. And therefore we command you, or any one of you, that at such times and places as you may appoint, you do cause the said witnesses named in the annexed interrogatories to come before you, or either of you, and then and there examine them on oath as witnesses in the cause aforesaid. And that you, or either of you, do take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seals, or the seal of any one of you, into our said circuit court with all convenient speed.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, the second Monday of April, in the year of our Lord one thousand eight hundred and fifty-one. Issued the fifteenth day of December, 1851.

[SEAL.]

Attest: JOHN FITTS,
Clerk C. C., Sou. dis., Ala.

The within appointment of commissioners is hereby confirmed, December 15, 1851. JOHN GAYLE,
Judge U. S. dist. court for Alabama.

Depositions of witnesses,

Sworn and examined the twenty-second day of December, A. D. 1851, at the office of the clerk of the circuit court of Lowndes county, Alabama, in Hayneville, under and by virtue of a commission issued out of the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, wherein Morgan B. Hinkle is plaintiff and Moses Wanzer et al. are defendants.

A. Harrison's deposition.

Alfred Harrison, of Lowndes county, being sworn says: To the first interrogatory he says, he knew Thomas Long, now deceased, late of Lowndes county, in his lifetime; he does not recollect precisely what time said Thomas Long died, but thinks it was in the latter part of 1843 or in the early part of the year 1844.

To the 2nd interrogatory he says: From the 4th of March, 1839, to the 4th of March, 1842, he was sheriff of Lowndes county, and is now sheriff of said county; he has had opportunities of knowing the pecuniary situation of said Thomas Long from being sheriff as above stated, and having in his hands various executions against said Long.

To 3d interrogatory he says: Said Thomas Long was insolvent at and before the time of his death; as above stated, he had in his hands, as sheriff, executions against said Long for various amounts, some for very small amounts which he was unable to collect, and which were returned, no property.

To 4th interrogatory he says: Said Long was notoriously insolvent, and was so reputed at the time of his death.

To 5th interrogatory he says: Said Long resided in Lowndes county, Alabama, at the time of his death.

To the 6th interrogatory he says, he knows nothing further.

ALFRED HARRISON.

B. Harrison's deposition.

Benjamin Harrison being sworn says: To the 1st interrogatory he says, he knew Thomas Long, late of Lowndes county, deceased, in his lifetime; he does not recollect precisely what time said Long died,

but thinks it was in the latter part of the year 1843 or early in the year 1844.

To the 2nd interrogatory he says: From the 4th of March, 1839, to the 4th of March, 1842, he acted as deputy sheriff of said county, and from March, 1842, to March, 1845, was sheriff of said county. He has had opportunities of knowing the pecuniary situation of said Long from being deputy and sheriff as aforesaid, and having had in his hands as such deputy and sheriff executions against said Long.

To the 3rd interrogatory he says: Said Thomas Long was insolvent before and at the time of his death. As above stated, he had in his hands as deputy and as sheriff executions against said Long for various amounts, which he was unable to collect, and which were returned, no property found.

To the 4th interrogatory he says: Said Long was notoriously insolvent, and was so reputed at the time of his death.

To the 5th interrogatory he says: Said long resided in Lowndes county, Alabama, at the time of his death.

To the 6th interrogatory he says, he knows nothing further.

B. HARRISON.

Cook's deposition.

Edward H. Cook being sworn says, to the 1st interrogatory: He knew Thomas Long, deceased, late of Lowndes county, in his lifetime; does not recollect what time said Long died, but thinks it was in 1843 or 1844.

To the 2nd interrogatory he says, he is judge of the probate court of Lowndes county. He says he has had no opportunities of knowing the pecuniary condition of said Thomas Long.

To the 3rd interrogatory he says, he does not know whether said Long was insolvent or not.

To the 4th interrogatory he says: From his best recollection it was reported that said Long was in embarrassed circumstances, but to what extend does not know.

To the 5th interrogatory he says: Said Thos. Long resided in Lowndes county at the time of his death.

To the 5th interrogatory (No. 2) he says, he is judge of the probate court of said county of Lowndes, and has charge and custody of the records of said court, and also of the late orphans' court of said county. He says he has examined the records of said court to the best of his skill and ability, and cannot find that any administration was ever had upon the estate of said Thomas Long.

To the 6th interrogatory he says, he knows nothing further that will be of benefit to the parties in this case.

EDWD. H. COOK.

Commissioner's certificate.

I, Samuel P. Nesmith, do certify that the foregoing deposition of

witnesses was taken and reduced to writing by me; the same was audibly read to said witnesses respectively, and the same sworn to and subscribed in my presence at a time and place appointed by me.

Witness my hand and seal this 22nd day of December, A. D. 1851.

SAM. P. NESMITH, *Com'r.* [SEAL.]

Interrogatories to Archibald Gilchrist.

MORGAN B. HINKLE, administrator de bonis non of John Fisher, vs. MOSES WANZER, John S. Hunter, and James F. Johnson. } Chancery docket.

In the circuit court of the United States, southern district of Alabama.

Interrogatories to Archibald Gilchrist, esq., a material witness for complainant on the trial of the above entitled cause.

1st. Do you know the parties; and did you know John Fisher in his lifetime?

2nd. Have you been a practising attorney at law; at what place did you practise, and during what years?

3rd. State whether or not you collected notes, accounts, and claims that were due and payable to John Fisher, Fisher & Johnson, Fisher & White, and Fisher, White & Co.; and state whether or not you paid over moneys thus collected to John S. Hunter or elsewhere under his directions. If so, please annex to your answer a statement showing the several amounts thus paid over, the times when paid, and the persons from whom the several sums were collected. Give an account of all the moneys you have a knowledge of thus paying over.

4th. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the merits in question in this cause? If yea, set forth the same fully and at large in your answer.

WM. G. JONES, *Solr. for plaintiff.*

Filed February 21, 1851.

JOHN FITTS, *Clerk.*

Marshal's return.

Received 22d Feb'y, 1851, and on same day executed the same upon Campbell & Chandler, attorneys for defendants, and handed them a copy.

C. BINGHAM, *U. S. M.*

1327.

Circuit court U. S.

THE STATE OF ALABAMA,
Mobile county.

Cross interrogatories to Archibald Gilchrist, James M. Boling, and Wm. P. Fisher, in the suit of Hinkle, adm'r, vs. John S. Hunter et al. in said court.

1. These witnesses are requested to answer fully and at large to all the questions of the plaintiff, setting forth the facts known to them, and the facts ascertained by them from others, and showing who gave the information.

2. Please state what sum of money you know J. S. Hunter to have received for his protection; also the extent of his liabilities for Fisher, or any firm of which Fisher was a member.

3. Please state what moneys were paid by John S. Hunter on account of said Fisher, or the firms of which he was a member, and when he paid them, and on what account.

CAMPBELL & CHANDLER,
For def'ts.

Filed 27th Feb'y, 1851.

JOHN FITTS, *Cl'k.*

Commission to take testimony of Archibald Gilchrist.

UNITED STATES OF AMERICA.

Circuit court of the United States, for the fifth judicial circuit, and southern district of Alabama.

MORGAN B. HINKLE, as administrator de bonis non of John Fisher, dec'd,
vs.
MOSES WANZER, James F. Johnson, and John S. Hunter.

To John N. Smith, Isaac B. Stone, and Milton J. Saffold, esqrs., of Lowndes county, State of Alabama, greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you, or any one of you, full power and authority to examine Archibald Gilchrist, of said county and State, and named in the interrogatories and cross interrogatories hereunto attached, as witness in a cause pending in our said court, wherein Morgan B. Hinkle, as administrator de bonis non of John Fisher, deceased, is complainant, and Moses Wanzer, James F. Johnson, and John S. Hunter, are defendants; and therefore we command you, or any one of you, that at such times and places as you shall appoint, you do cause the said Archibald Gilchrist, a witness on the part of the complainant in said cause, to come before you, or either of you, and then and there examine him as a witness, on oath, in the cause aforesaid. And that you, or either of you, do take such examination

and reduce the same into writing, and return the same annexed to this writ, closed up under your seals, or the seal of any one of you, into our said circuit court with all convenient speed.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, [SEAL.] the second Monday of December, in the year of our Lord one thousand eight hundred and fifty.

Issued the seventh day of March, 1851.

Attest: JOHN FITTS,
Cl'k C. C. sou. dis. Ala.

The appointment of commissioners is hereby confirmed, this 7th March, 1851.

JOHN GAYLE,
Judge U. S. dist. court for Ala.

Deposition of witness sworn and examined this day of March, A. D. 1851, under and by virtue of a commission issued out of the circuit court of the United States, for the southern district of the State of Alabama, in a certain cause therein pending between M. B. Hinkle, adm'r de bonis non, complainant, and Moses Wanzer, John S. Hunter, and James F. Johnson, defendants.

Deposition of A. Gilchrist.

Archibald Gilchrist, being sworn and examined on the part of complainant, deposeth and says as follows:

To 1st interrogatory he saith: I know the parties, except Moses Wanzer; I knew John Fisher, deceased.

To 2d interrogatory he saith: I was a practising attorney at law from 1831 to 1848, and resided all the time at Hayneville, Lowndes county, Alabama.

To 3d interrogatory he saith: Gilchrist & Bedford, of which firm witness was a partner, collected claims in favor of John Fisher, Fisher & White, Fisher & Johnson, and Fisher, White & Co.; the papers marked (A) describe some of the claims, and there were probably other demands, but none of the money so collected was ever paid to John S. Hunter, or elsewhere, under his directions. John S. Hunter, to the knowledge of witness, never set up any claim to papers placed with Gilchrist & Bedford for collection, by John Fisher, or any of his various partners, nor to the money made upon said papers.

To 4th interrogatory he saith, he knows nothing in answer to this general question that is not elicited by the particular direct and cross interrogatories.

To cross interrogatories.

To 1st, he saith, he has understood that John Fisher assigned to J. S. Hunter various demands for money to secure him, but these wen

under the control of Hunter & Cook, a law firm in Lowndes, 12 or 15 years ago, and witness has no particular information of their value or amounts. He has heard much said about Hunter being largely liable for Fisher, and Fisher having passed to him various large amounts to secure him, but he knows nothing certainly, except what is particularly asked for in 2d and 3d cross interrogatories.

To 2d he saith, he does not know what sum of money Hunter received from Fisher for his protection. Hunter was the 2d endorser of a bill of exchange drawn by Fisher & Johnson on John A. Elmore, and accepted by him, payable to Johnson & Dozier, and endorsed by them, dated 8th March, 1837, and due at 90 days, for $2,800, which was protested for non-payment; this bill was for the debt of Fisher & Johnson to Nelson, Carleton & Co. He has no knowledge of any other liability of Hunter for Fisher so particularly as to describe it.

To 3d he saith: Gilchrist & Bedford received the bill of exchange named above, from Nelson, Carleton & Co., for collection, and the parties liable before Hunter being insolvent; he paid the same in full, to wit, $3,442, for principal, interest, and damages. From memorandums in my possession he seems to have paid, on the 8th January, 1839, $1,100; on the 13th Feb'y, 1839, $800; and the balance before the 1st April, 1839, except $250; it does not appear when this was paid, but I think in 1839. The payments were made in money, except an amount in execution in favor of J. F. Johnson against Stephen Bonnell, for about $150 or $200, according to my recollection, which was assigned by Hunter and paid by Bonnell.

ARCH'D GILCHRIST.

Examination taken, reduced to writing, sworn to and subscribed, this 26th day of March, A. D. 1851.

J. B. STONE, [SEAL.]
Commissioner.

Papers referred to in Gilchrist's deposition.—A.

Exhibits A.

By the first day of January next I promise to pay Stephen Bonnell two hundred dollars, for value received.

JOHN L. COBURN.

February 27th, 1836.

June 3d, 1837. Received of Stephen Bonnell, for collection, the note of which the above is a copy.

GILCHRIST & BEDFORD.

Messrs. GILCHRIST & BEDFORD,
Will please pay to Fisher & Johnson the amount of the proceeds of the within note when collected.

STEPHEN BONNELL.

Paper also referred to in Gilchrist's deposition.

A.

Amount of receipts of Gilchrist & Bedford.

William Brogden, dated Jan'y 1, 1836, due one day after		$57 13
Paid to att'y		102 24
Wm. Staggen—Jan. 2, 1837, and due one day after date		93 63
" Jan. 1, 1836, and due one day from date	158 44	135 63
" Jan. 2, 1837, due 1 after date	(168 43)	164 15
Wm. McBride - - - Paid to att'y	(163 54)	41
Jan'y 1, 1836, and due 1 after date		$138 88
" 2, 1837, and due 1 after date		158 77
Made, and in sheriff's hands	(174 15)	
Stamps & Chandler—April 1, 1834, and due Jan'y 1, ensuing	135 00	13 50
Judg't, (nulla)		153 72
Wm. Rice, Cottrell et al., commissioners for M. church ac.	$880 00	492 00
John L. Coburn—Feb'y 26th, 1836, and due Jan'y ensuing		200 00
Calvin Joiner—Jan'y 7th, 1836, and due one day after	176 17	
	2 50	
Jud.	193 79	
(Pruit claims the money)—attorney.		
Samuel Clark—Aug. 1st, 1836, and due 1 after date	(made)	125 50
Wm. Wyatt—July 18, 1835, then due	(made)	81 00
F. L. Daniel—April 26, 1836, and due one after	(nulla)	107 58
Debt		213 56
John Pan—Mar. 17, 1834, and due 1 after date	(made)	213 28
Debt—paid to att'y		371 85
Eliza Smith—Feb'y 20, 1835, and due 1 after date	(made)	62 42
Butler county.		
Samuel Nesmith—March 10th, 1835, and due 1 after date with interest		179 62
Perry claims money.		
Allen Love—Jan'y 1, 1835, and due 1 after	(made)	316 56
Debt—to att'y		384 73
Benj. W. Johnson—July 30, 1835, and due 1 after date		100 00
Debt, &c.—nulla.		
Allen Love—Feb'y 13, 1837, and due 1 after date, U. S. C.		1,004 23
Paid		408 00
Nat. Tucker—March 6, 1837, and due 1 day after	(made)	105 50
Judg.—paid to att'y		115 04

Allen Love—Feb'y 1, 1837, due 1 day after, and inter. from Jan. 1, 1837 - - (made) - $271 28
Judg.—paid to att'y - 295 94
W. & J. Pan—May 20, 1835, and due Jan. 14, 1836 (made) 2,067 11
Judg't - 2,386 99
In hands of G. & B.
Caswell Garrett—Jan'y 29, 1836, and due 1 after date, with from Jan'y 1, 1836 - - - 67 80
Also one dated March 21, 1835, and due one day after date, with interest from Jan'y 1, 1835 - - - - 73 51
Defendant says paid to plaintiff.

Commissioner's endorsement on exhibit above.

At the execution of a commission for the examination of witnesses between Morgan B. Hinkle, complainant, and Moses Wanzer, John S. Hunter, James F. Johnson, defendants, this paper was produced and shown to Archibald Gilchrist, a witness, and by him deposed to before me. As witness my hand and seal.

ISAAC B. STONE, *Commissioner*. [SEAL.]

In the circuit court of the United States, for the southern district of Alabama.—In chancery.

MORGAN B. HINKLE
vs.
MOSES WANZER, John S. Hunter, James F. Johnson.

Interrogatories to be propounded to John M. Sadler, a witness to be produced, sworn and examined in behalf of the plaintiff in the above entitled cause, now pending in the circuit court of the United States for the southern district of Alabama.

Interrogatories to J. M. Sadler.

Interrogatory 1. Do you know any and which of the parties in the above entitled cause? Did you know the late John Fisher in his lifetime? When or about what time did the said John Fisher die?

Interrogatory 2. Do you or not know whether the defendant, John S. Hunter, ever received from the said John Fisher, in his lifetime, or from his administrator after his death, or from his estate after his death, any notes, bonds, bills of exchange, accounts or claims of any sort belonging to said John Fisher, or to his estate, or of either of the mercantile firms of Fisher & Johnson, Fisher & White, or Fisher, White & Co., of which the said Fisher was or had been a member. If so, please state as fully and particularly as you can every such note, bond, bill, amount and claim, with the amounts and persons liable on the same. Please make a list of them and attach the same to your answer to this interrogatory.

Interrogatory 3. State whether at the time of the death of the said John Fisher you, or any firm of which you were or had been a partner, owed the said John Fisher a debt; how much was it? State whether it was or not afterwards sued on and reduced to judgment; and if yea, in what way was it sued; and state the amount of the judgment. State whether you have or have not since settled up that judgment, and have a full discharge. If yea, when or about what time did you so settle it, and with whom? Please look at the transcript hereto attached, marked A, and say whether it is or is not a correct statement of that judgment?

Interrogatory 4. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this case, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

WM. G. JONES, *Sol'r for pl'ff.*

Filed February 21, 1851.

JOHN FITTS, *Cl'k.*

Transcript referred to in interrogatory 3d.

Be it remembered, that at a circuit court begun and held in and for county of Lowndes, and State of Alabama, at the place of holding the same, on the first Monday after the fourth Monday in September, it being the 5th day of October, in the year of our Lord one thousand eight hundred and forty, the honorable Ezekiel Pickens presiding judge.

Writ.

The State of Alabama, to any sheriff of the State of Alabama, greeting:

You are hereby commanded without delay to take Thomas H. Barnes and John M. Sadler, merchants, trading under the name and style of Barnes & Sadler, if to be found in your county, and them safely keep, so that you may have their bodies before the honorable the judge of the circuit court, at a court to be holden for Lowndes county, at the court-house thereof, on the first Monday after the fourth Monday in March, instant, then and there to answer William P. Fisher and Nancy Fisher, administrator and administratrix of all and singular the goods and chattels, rights and credits of John Fisher, deceased, who sue for the use of John S. Hunter, in a plea of trespass on the case to the damage of the said plaintiff of sixteen thousand dollars. And have you then and there this writ, with your endorsement thereon.

Witness Robert Perry, clerk of said court, at office, this fourteenth day of March, one thousand eight hundred and thirty-eight, and of American independence the 62d year. Issued 14th day of March, 1838.

ROBERT PERRY, *Clerk.*

1330.

Cause of action.

On the first day of March next we promise to pay John Fisher or order eight thousand seven hundred and two $\frac{73}{100}$ dollars, for value received, with interest from the 1st January last.

Feb'y 2d, 1838.

(Signed) BARNES & SADLER.

The above is a copy of the cause of this action.

Attest: HUNTER & COOK, *Att'ys.*

Sheriff's return.

Received in office and executed, March 14th, 1838.

B. B. PRUITT, *Sh'ff*,
By JOHN T. PRUITT, *D. S.*

Declaration.

THE STATE OF ALABAMA, *Lowndes county, ss.*

Circuit court, spring term, 1838.

William P. Fisher and Nancy Fisher, administrator and administratrix of all and singular the goods and chattels, rights and credits of the estate of John Fisher, deceased, who sue for the use of John S. Hunter, by attorney, complain of Thomas H. Barnes and John M. Sadler, merchants, trading under the firm and style of Barnes & Sadler, in custody, &c., in a plea of trespass on the case, &c. For that whereas the said defendants heretofore, to wit, on the second day of February, in the year of our Lord one thousand eight hundred and thirty-eight, at, to wit, in the county aforesaid, made their certain instrument in writing, commonly called a promissory note, bearing date the day and year aforesaid, and thereby then and there promised to pay to said John Fisher or order eight thousand seven hundred and two $\frac{73}{100}$ dollars, for value received, with interest from the first day of January last, on the first day of March, then next, after the date of said note. By means whereof, and by force of the statute in such case made and provided, the said defendants then and there became liable to pay to the said John Fisher, in his lifetime, the said sum of money in said note specified according to the tenor and effect thereof, and being so liable, they, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, undertook, and then and there faithfully promised the said John Fisher, in his lifetime, to pay him said sum of money in the said note specified, according to the tenor and effect thereof. Yet the said defendants, although often requested, the said sum of money in the said note specified did not pay to the said John Fisher in his lifetime, nor to the said plaintiff since his death, although often requested so to do, nor any part thereof, but so to do have hitherto wholly neglected and

refused, and still doth neglect and refuse, to the damage of the said plaintiffs of sixteen thousand dollars, and therefore they bring their suit, &c.

HUNTER & COOK, *Pl'ffs att'ys.*

Pleas.

Defendants, by consent, plead in short: 1st. Non assumpsit. 2d. Set off. 3d. That there was a contract made between plaintiffs' intestate, John Fisher, the payee in the note, and the defendants; that by that contract, defendants were to pay any notes of intestate, and that should be payment on the note sued on. 4th. Payment ad solvit diem. 5th. Payment puis darien continuance. 6th. Payment post solvit diem. 7th. That defendants were securities for Fisher, the intestate, to the bank at Montgomery, in a sum of ten thousand dollars, and they have, since the death of said Fisher, paid the same.

Pleas filed, fall term, 1839.

COTTRELL & POPE, *for def'ts.*

Replication.

And the plaintiffs move to strike out all the pleas but the 5th plea, as that is the plea of payment since the last continuance; and in the 5th plea plaintiffs take issue, and allege that since the last continuance said defendant has not paid said plaintiffs said note, or any part thereof; and of this he puts himself upon the county.

DARGAN, *for pl'ff.*

Replication filed, fall term, 1839.

DARGAN, *for pl'ff.*

Exceptions.

THE STATE OF ALABAMA, *Lowndes county.*

Circuit court, fall term, 1840.

WM. P. AND NANCY A. FISHER, for use, &c.,
vs.
BARNES & SADLER.

This cause coming on for trial at this term of the court, before the honorable Ezekiel Pickens, the defendants moved the court to enter judgment for them on their first, second, third, fourth, sixth and seventh pleas, which are not replied to by plaintiffs, and upon which no issue is formed; which motions the court overruled. To this opinion of the court the defendants except on the trial of the cause; the note sued on was offered in evidence by plaintiffs, and the only evidence offered by them; the defendants proved by witnesses that after the note was made, the payee of the note, while in his, payee's, possession, and whilst his property, agreed with the defendants, the makers of the note, that he would receive in payment of said note any good paper on third per-

sons—that is, promissory notes, bills of exchange, &c.; and that he would also receive his payee's own notes, bills of exchange, &c., in payment of the note sued on. The defendants then offered in evidence the following promissory notes on the payee of said note, on which said notes the defendants proved they owned, whilst said note sued on was in the possession of the payee of said note, to wit:

Due H. M. Phillips, or bearer, five hundred and ninety $\frac{5}{100}$ dollars, money loaned.

(Signed) JOHN FISHER.

January 3d, 1838.

HAYNEVILLE, *June 9th*, 1837.

$1,200. On or before the first day of January next, we, or either of us, promise to pay to Green Wood, or bearer, twelve hundred dollars, for value received.

(Signed) JOHN FISHER,
JAS. F. JOHNSON.

$1,490 50. One day after date, we promise to pay James F. Munnerlyn, or bearer, fourteen hundred and ninety and $\frac{50}{100}$ dollars, for value received.

(Signed) FISHER & JOHNSON,
JOHN M. SADLER,
JOHN H. WILKINS.

March 10, 1837.

Due Thomas J. Bedford five hundred dollars, borrowed money.

(Signed) JOHN FISHER.

October 30th, 1837.

$596. Due Thos. J. Bedford, or bearer, five hundred and ninety-six dollars, borrowed money.

(Signed) JOHN FISHER.

April 24th, 1837.

Dolls. 702 00. One day after date, I promise to pay Thomas Long, or bearer, seven hundred and two dollars, value received.

(Signed) JOHN FISHER.

February 2, 1838.

$400. One day after date, I promise to pay B. Boykin four hundred dollars, value received, this 31st January, 1838.

(Signed) JOHN FISHER.

One day after date, I promise to pay Wm. Ryan, S. P. of Porter & Ryan, or bearer, sixty-four $\frac{7}{100}$ dollars, for value received.

(Signed) JOHN FISHER.

May 1st, 1837.

Due Porter & Ryan, or bearer, sixty-six $\frac{94}{100}$ dollars, value received.

(Signed) JOHN FISHER.

August 26, 1837.

refused, and still doth neglect and refuse, to the damage of the said plaintiffs of sixteen thousand dollars, and therefore they bring their suit, &c.

HUNTER & COOK, *Pl'ffs att'ys.*

Pleas.

Defendants, by consent, plead in short: 1st. Non assumpsit. 2d. Set off. 3d. That there was a contract made between plaintiffs' intestate, John Fisher, the payee in the note, and the defendants; that by that contract, defendants were to pay any notes of intestate, and that should be payment on the note sued on. 4th. Payment ad solvit diem. 5th. Payment puis darien continuance. 6th. Payment post solvit diem. 7th. That defendants were securities for Fisher, the intestate, to the bank at Montgomery, in a sum of ten thousand dollars, and they have, since the death of said Fisher, paid the same.

Pleas filed, fall term, 1839.

COTTRELL & POPE, *for def'ts.*

Replication.

And the plaintiffs move to strike out all the pleas but the 5th plea, as that is the plea of payment since the last continuance; and in the 5th plea plaintiffs take issue, and allege that since the last continuance said defendant has not paid said plaintiffs said note, or any part thereof; and of this he puts himself upon the county.

DARGAN, *for pl'ff.*

Replication filed, fall term, 1839.

DARGAN, *for pl'ff.*

Exceptions.

THE STATE OF ALABAMA, *Lowndes county.*

Circuit court, fall term, 1840.

WM. P. AND NANCY A. FISHER, for use, &c.,
vs.
BARNES & SADLER.

This cause coming on for trial at this term of the court, before the honorable Ezekiel Pickens, the defendants moved the court to enter judgment for them on their first, second, third, fourth, sixth and seventh pleas, which are not replied to by plaintiffs, and upon which no issue is formed; which motions the court overruled. To this opinion of the court the defendants except on the trial of the cause; the note sued on was offered in evidence by plaintiffs, and the only evidence offered by them; the defendants proved by witnesses that after the note was made, the payee of the note, while in his, payee's, possession, and whilst his property, agreed with the defendants, the makers of the note, that he would receive in payment of said note any good paper on third per-

sons—that is, promissory notes, bills of exchange, &c.; and that he would also receive his payee's own notes, bills of exchange, &c., in payment of the note sued on. The defendants then offered in evidence the following promissory notes on the payee of said note, on which said notes the defendants proved they owned, whilst said note sued on was in the possession of the payee of said note, to wit:

Due H. M. Phillips, or bearer, five hundred and ninety $\frac{5}{100}$ dollars, money loaned.

(Signed) JOHN FISHER.

January 3d, 1838.

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(Signed) JOHN FISHER,
JAS. F. JOHNSON.

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(Signed) FISHER & JOHNSON,
JOHN M. SADLER,
JOHN H. WILKINS.

March 10, 1837.

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April 24th, 1837.

Dolls. 702 00. One day after date, I promise to pay Thomas Long, or bearer, seven hundred and two dollars, value received.

(Signed) JOHN FISHER.

February 2, 1838.

$400. One day after date, I promise to pay B. Boykin four hundred dollars, value received, this 31st January, 1838.

(Signed) JOHN FISHER.

One day after date, I promise to pay Wm. Ryan, S. P. of Porter & Ryan, or bearer, sixty-four $\frac{7}{100}$ dollars, for value received.

(Signed) JOHN FISHER.

May 1st, 1837.

Due Porter & Ryan, or bearer, sixty-six $\frac{84}{100}$ dollars, value received.

(Signed) JOHN FISHER.

August 26, 1837.

MOBILE, *January* 16, 1838.

$443. At ten days' sight, pay to J. B. Wilkins, four hundred and forty-three dollars, value received, and charge to account.

Your ob't serv't, T. J. BEDFORD.

To JOHN FISHER, esq.

JOHN FISHER.

They, defendants, also offered to prove that they had paid to the branch of the Bank of the State of Alabama at Montgomery, ten thousand dollars for the payee of the note sued on, on paper of his on which they were his securities; said payment made the 13th September, 1838. They became the securities of payee before the making of the note sued on. This proof was objected to by plaintiff, and refused by the court, to which defendant excepted, and tendered his bill of exceptions, which is signed and sealed by said judge *by said judge* the 13th day of October, 1840. E. PICKENS, [SEAL.]

Continuance.

W. P. & N. A. FISHER vs. BARNES & SADLER. } 587.

Circuit court, fall term, 1838.

Continued by consent.

Continuance.

W. P. & N. A. FISHER vs. BARNES & SADLER. } 109.

Circuit court, spring term, 1839.

Continued for defendant on account of absence of defendant's counsel, on the payment of costs of term.

Continuance.

W. P. & N. A. FISHER vs. BARNES & SADLER.

Circuit court, fall term, 1839.

Death of Thomas H. Barnes suggested, and the cause continued on affidavit of defendant.

Judgment.

WILLIAM P. FISHER, administrator, Nancy A. Fisher, adm'x, use, &c., vs. BARNES & SADLER. } 23.

Circuit court, spring term, 1840.

This day came the parties, by their attorneys, and thereupon came a

jury, to wit, Joseph J. Hall and eleven others, who, being empanneled and sworn well and truly to try the issue joined between the parties, upon their oaths do say: We find for the plaintiffs, and assess their damages at ten thousand two hundred and sixty-nine $\frac{33}{100}$ dollars. It is therefore considered by the court that the plaintiffs recover of the defendants the sum so assessed by the jury aforesaid, together with the costs in this behalf expended.

Motion and judgment set aside.

W. P. & N. A. Fisher
vs.
Barnes & Sadler.

Circuit court, spring term, 1840.

Motion to set aside judgment on a showing: It is ordered by the court, that the judgment in this case be set aside, and cause continued.

Judgment.

W. P. & N. A. Fisher
vs.
Barnes & Sadler. 14½.

Circuit court, fall term, 1840.

This day came the parties, by their attorneys, and thereupon came a jury, to wit, Silas Garrett and eleven others, who, being empanneled and sworn well and truly to try the issue joined between the parties, upon their oath do say: We find for the plaintiffs, and assess their damages at ten thousand six hundred and thirty $\frac{33}{100}$ dollars. It is therefore considered by the court, that the plaintiffs recover of the defendants the sum so assessed by the jury aforesaid, together with the costs in this behalf expended.

Certificate.

The State of Alabama, *Lowndes county.*

I Samuel P. Nesmith, clerk of the circuit court in and for said county, do hereby certify that the foregoing pages (7 in number) contain a full, true, and correct transcript of record, as appears of record in my office.

Given under my hand and seal of office, this 17th day of December, A. D. 1850.

SAM. P. NESMITH, *Clerk.*

Cross interrogatories to Sadler.

Hinkle, administrator,
vs.
John S. Hunter et al.

Circuit court of the United States.

Cross interrogatories for J. M. Sadler.

1. If you say that you know of assets delivered to the defendant from

John Fisher, or the firms of which he had been a member, answer fully and at large where you got your information; was it by conversation with any one, and with whom; how are you enabled to make a list of bonds, bills, and notes, or of other property? State fully and exactly the means of your information.

2. If you say you have paid any money to the defendant, state the amount; when you paid it; in what manner did you pay it; to whom did you pay it; with every other fact relating to it.

3. State any other fact in your knowledge which will explain your testimony, or benefit the defendants.

CAMPBELL & CHANDLER,
For defendants.

Filed, 27th February, 1851. JOHN FITTS, *Clerk.*

Commission to take Sadler's testimony.

UNITED STATES OF AMERICA.

Circuit court of the United States, for the fifth judicial circuit and southern district of Alabama.

MORGAN B. HINKLE, administrator de bonis non of John Fisher, dec'd,
vs.
MOSES WANZER, JAMES F. JOHNSON, and John S. Hunter.

To John N. Smith, Isaac B. Stone, and Milton J. Saffold, esqrs., of Lowndes county, State of Alabama, greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you, or any one of you, full power and authority to examine John M. Sadler, of said county and State, and named in the direct and cross interrogatories hereunto attached, as witness in a cause pending in our said court, wherein Morgan B. Hinkle, and as administrator de bonis non of John Fisher, deceased, is complainant, and Moses Wanzer, James F. Johnson, and John S. Hunter, are defendants. And therefore we command you, or any one of you, that at such times and places as you may appoint, you do cause the said John M. Sadler, a witness on the part of the complainant in said cause, to come before you, or either of you, and then and there examine him on oath, as a witness in the cause aforesaid. And that you, or either of you, do take such examination, and reduce the same into writing, and return the same annexed to this writ, closed up under your seals, or the seal of any one of you, into our said circuit court, with all convenient speed.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit [SEAL.] court, the second Monday of December, in the year of our Lord one thousand eight hundred and fifty.

Issued the seventh day of March, 1851.

Attest: JOHN FITTS, *Clerk C. C. So. dist. Ala.*

The appointment of commissioners is hereby confirmed, this 7th day of March, 1851.

JOHN GAYLE,
Judge district courts U. S. for Alabama.

Sadler's deposition.

MORGAN B. HINKLE
vs.
MOSES WANZER et al.

Deposition of John M. Sadler, a witness sworn and examined the 5th day of April, 1851, under commission issued from the U. S. district court at Mobile, Alabama, in the above stated case pending between the said parties at Mobile.

To 1st interrogatory he says, he knew all the parties to this suit; he knew John Fisher in his lifetime; he died early in February, 1838.

To 2nd interrogatory he says, he does not know certainly of Hunter receiving any other notes or amounts of Fisher, his administrator, or estate, except one note on Barnes & Sadler for some eight thousand seven hundred and two dollars; does not know who Hunter received it from, or how he got it.

To third interrogatory he says: At the time of the death of the said Fisher, Barnes & Sadler owed John Fisher some eighteen to nineteen thousand dollars; the note stated above was sued to the spring term circuit court, 1838, in the name of the Administrator's use, &c., vs. Barnes & Sadler, and reduced to judgment at the fall term, 1840, according to transcript marked A, the judgment amounting to ten thousand six hundred and thirty $\frac{88}{100}$ dollars. I compromised the above judgment with Hunter, I think, in the spring of 1841, and got a full discharge of the judgment or debt. He says he cannot say whether the transcript is or is not a correct statement, but presumes it is; he further says he is under the impression the case was taken up to the supreme court and judgment reversed; but cannot say certainly at this time.

To 4th interrogatory he says, he does not know of any other matter or thing that would be of advantage to either of them.

Cross interrogatories.

To 1st cross interrogatory he says, he refers to answer of the 3d direct interrogatory for answer to this.

To 2d cross interrogatory he says, he paid Hunter a house and lot which he valued at fifteen hundred dollars; one hundred and sixty acres of land which he never saw, does not know the value of it, paid two hundred dollars for it; a small lot of cattle worth some seventy-five dollars; a horse worth from $100 to $150, and gave him his note for three hundred dollars payable on the 1st Jan'y following, 1842, which he paid at maturity; he further says, that at the time of the compromise with Hunter his liabilities were at least five times more than his assets,

and without a compromise in the matter he never would have been able to have paid Hunter one cent, at least never would have done so.

To 3d cross interrogatory he says, he knows no other fact that will explain his testimony better than the testimony itself, or to benefit defendant.

JNO. M. SADLER.

Deposition taken, reduced to writing, sworn to and subscribed this 5th day of April, 1851, before me,

MILTON J. SAFFOLD, *Com'r*, [SEAL.]

Interrogatories to Nathan Cook.

In the circuit court of the United States, for the southern district of Alabama.

MORGAN B. HINKLE
vs.
MOSES WANZER, JOHN S. HUNTER and JAMES F. JOHNSON. } In chancery.

Interrogatories to be propounded to Nathan Cook, a witness to be produced and examined on behalf of plaintiff in the above entitled cause, now pending in the circuit court of the United States, for the southern district of Alabama.

Interrogatory 1. Do you know any and which of the parties to the above entitled suit? Did you know the late John Fisher in his lifetime? When or about what time did the said John Fisher die?

Interrogatory 2. Do you or not know whether the defendant, John S. Hunter, ever received from the said John Fisher in his lifetime, or from his administrator after his death, or from his estate after his death, any notes, bonds, bills of exchange, accounts or claims of any sort, belonging to the said John Fisher, or to his estate, or of either of the mercantile firms of Fisher & Johnson, Fisher & White, or Fisher, White & Co., of which the said Fisher was or had been a partner? If so, please state as fully and particularly as you can every such note, bond, bill, account and claim, with the amounts and persons liable on them. Please make a list of the same and attach it to your deposition as part of your answer to this interrogatory.

Interrogatory 3. Do you or not know of the said defendant, Hunter, having received or collected any moneys on any such note, bond, bill, account or claim? If so, state fully and particularly any and every such sum of money so received or collected by said defendant, Hunter, and attach a statement of the same to your deposition as part of your answer to this interrogatory.

Interrogatory 4. For what purpose or on what account did the said defendant, Hunter, receive or collect the notes, bonds, bills, accounts and claims referred to? Was it not as indemnity for liabilities incurred by him as security or endorser for said John Fisher? State fully all you know on this subject.

Interrogatory 5. Do you or not know of the said defendant, Hunter, having been indebted to the said John Fisher, or to either of the said firms of which said Fisher was a partner, on any note, bill, account, or otherwise? Did the said Hunter receive or get from said Fisher, or his estate, or his administrator, any such note or bill made by him the said Hunter, or any such account against him? If so, state as fully and particularly as you can any and every such note, bill, account or debt. And on what account, or for what reason or purpose, did the said Hunter get or receive the same?

Interrogatory 6. Do you know of the said Hunter receiving or getting any property, real or personal, from the said Fisher, or his estate, or his administrator, on any and what account? If yea, state what property he so received or got, and what was its value. What was done with such property, and what money did the said Hunter get for it? Was it or not received or taken by said Hunter as indemnity for his liabilities as security or endorser for said Fisher? State all you know on this subject.

Interrogatory 7. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this case, or *or* either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

WM. G. JONES, *Sol'r for pl'ff.*

Filed Feb'y 21, 1851.

JOHN FITTS, *Clerk.*

Marshal's return.

Rec'd 22d Feb'y, 1851, and on same day executed the same upon Campbell & Chandler, att'ys for def'ts, and delivered them a copy.

C. BINGHAM, *U. S. M.*

Cross interrogatories to Nathan Cook.

1. Did the papers of John Fisher come into the hands of John S. Hunter, or Hunter & Cook? Were you of that law firm? Please state what control J. S. Hunter exerted over them; please state what become of the papers alluded to. Were suits brought on any? Please describe the diligence employed to collect them, and whether there was any failure to collect in any and what cases.

2. What did John Fisher owe the firm of Hunter & Cook at the conclusion of the business, and how was that sum paid?

3. Did Fisher or Pennington, his agent and clerk, withdraw any and what papers? Do you know whether either abstracted or obtained any, and which, and in what manner?

4. Can you state precisely, or in any manner, the amounts realized to Hunter from the effects of Fisher, delivered to him or to Hunter & Cook? Please answer as nearly as you can this question.

5. Please set forth as fully as you can the whole of the papers and property which came to Hunter from Fisher, and their value.

6. Do you know, or can you conceive of any advantage Hunter could derive from Pennington's absence from Alabama?

CAMPBELL & CHANDLER, *Def'ts att'ys.*

Filed 27 Feb'y, 1851.

JOHN FITTS, *Clerk.*

Commission to take N. Cook's testimony.

UNITED STATES OF AMERICA.

Circuit court of the United States, for the fifth judicial circuit and southern district of Alabama.

MORGAN B. HINKLE, adm'r de bonis non of John Fisher, deceased,
vs.
MOSES WANZER, JAMES F. JOHNSON and JOHN S. HUNTER.

To John N. Smith, Isaac B. Stone and Milton J. Saffold, esq'rs, of Lowndes county, State of Alabama, greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you, or any one of you, full power and authority to examine Nathan Cook, of said county and State, and named in the direct and cross interrogatories hereunto attached, as witness in a cause pending in our said court, Morgan B. Hinkle, as administrator de bonis non of John Fisher, deceased, is complainant, and Moses Wanzer, James F. Johnson and John S. Hunter, are defendants. And therefore we command you, or any one of you, that at such times and places as you may appoint, you do cause the said Nathan Cook, a witness on the part of the complainant in said cause, to come before you, or either of you, and then and there examine him on oath as a witness in the cause aforesaid. And that you or either of you do take such examination, and reduce the same into writing and return the same annexed to this writ, closed up under your seals, or the seal of any one of you, into our said circuit court, with all convenient speed.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, the second Monday of December, in the year of our Lord one thousand eight hundred and fifty.

Issued the seventh day of March, 1851.

Attest: JOHN FITTS,
Clerk circuit court southern district, Alabama.

The appointment of commissioners is hereby confirmed, this 7th March, 1851. JOHN GAYLE,
Judge U. S. district courts for Alabama.

1995

Deposition of Nathan Cook.

M. B. HINKLE
vs.
M. WANZER, J. S. Hunter,
James F. Johnson.

Deposition of witness sworn and examined this 11th day of April, 1851, under and by virtue of a commission issued out of the U. S. circuit court, at Mobile, in a certain cause therein pending, in which M. B. Hinkle is complainant, and Moses Wanzer, John S. Hunter and James F. Johnson are defendants.

Answers of Nathan Cook, a witness produced and sworn before the undersigned commissioner.

To the first interrogatory he says, he knows all the parties except Wanzer.

2d interrogatory. I know that Judge Hunter did receive of John Fisher demands against several persons—I think, notes and accounts transferred to him on account of some liabilities which he had incurred for Fisher—but I am unable to give the amounts, the names of the debtors, or the number of them, or to what firm they were payable *to*. He had a note, I think, upon Barnes & Sadler, for eight or ten thousand dollars, or perhaps two of them. One of the notes, however, was entirely discharged by sets-off against Fisher; I have no knowledge of my own what became of the other. Mr. Barnes died about the time insolvent, and Sadler was, at the time, thought to be broke by his liabilities for Fisher. He also had a note which was payable to John Fisher, on one Shearer, and transferred, for eight or ten hundred dollars—or perhaps more—which was afterwards recovered from him by Fisher, White & Co., as I know. The debts coming to my knowledge were generally small debts, and many of them, as well as I recollect, were doubtful or bad; but it has been about twelve years since I knew anything of these matters, and like other matters in which I had no concern generally, they have passed out of my mind. I have no list, and can answer this interrogatory no more satisfactory than has been done.

3d interrogatory. I do not know of my knowledge at this time of moneys collected by Judge Hunter, on any of the debts assigned to him by Fisher, as above stated. I know that he collected some—perhaps as much as seven or eight hundred dollars—but I cannot state who he collected from. I understood, however, that it was on account of his liabilities for Fisher.

4th interrogatory. I understood that Judge collected the money above mentioned on account of his liabilities for Fisher, as indemnity, &c.

5th interrogatory. I do not know of any indebtedness from defendant Hunter to Fisher, or to any firm of which Fisher was a partner, or of his taking up such note from Fisher, or his estate, or administrator.

6th interrogatory. Of my own knowledge I know nothing about Judge Hunter getting property, real or personal, from Fisher, or his estate or administrator. I can answer nothing more to this interrogatory.

7th interrogatory. I know of nothing which I would suppose beneficial to the plaintiff in the suit. The defendant, Hunter, and myself were partners in business, but dissolved shortly after the death of John Fisher. We were both greatly embarrassed by Fisher, and he took one road and I another. He may have had some good luck, but this deponent had none. This is mentioned to show that his interest and mine were adverse; and of course we were lead to conceal rather than expose to each other our means of indemnity.

N. COOK.

Answers to cross interrogatories.

1st cross interrogatory. There were some papers put into my hands by Fisher, as Hunter & Cook. They were intended to be for the indemnity of defendant Hunter, one of which I have mentioned; the others were small debts—some unliquidated accounts and notes—but I do not recollect who the debts were on further than I have stated. Suits were brought on the debt of Fisher, White & Co., but never was collected by defendant. I do not recollect what papers were sued on; but I can say that no debt was lost for the want of diligence. I am satisfied that the debts were of but little value.

2d. Fisher owed the firm of Hunter & Cook some four or five hundred dollars, which was paid out of collections for him, in part; but some of it was never paid that I know of.

3d. I have no recollection of the withdrawal of any particular debt by Fisher or his agent, Pennington; it was the constant habit of Fisher to withdraw and settle debts after they were placed in our (H. & C.'s) hands for collection.

4th. I cannot state what Judge Hunter realized from the effects placed in the hands of Hunter & Cook, by Fisher. It must have been comparatively small—not exceeding seven or eight hundred dollars, if so much. What Judge Hunter received or realized on his own account from Fisher, if any thing, I know nothing about.

5th. I am unable to set forth, further than I have done, the papers and property which came to defendant Hunter, and Hunter & Cook, or their value.

6th. I cannot imagine any advantage that defendant Hunter could derive from Pennington's absence. N. COOK.

Commissioner's certificate.

Examination taken, reduced to writing, sworn to, and subscribed, this 11th day of April, 1851, before me, as witness my hand and seal. [SEAL.]

J. B. STONE,
Commissioner.

1336.

Interrogatories to Wm. P. Fisher.

MORGAN B. HINKLE
vs.
MOSES WANZER, JOHN S. HUNTER, JAMES F. JOHNSON. } In chancery.

In the circuit court of the United States, for the southern district of Alabama.

Interrogatories to be propounded to William P. Fisher, a witness to be produced, sworn, and examined on the behalf of the plaintiff in the above entitled suit, now pending in the circuit court of the United States, for the southern district of Alabama.

Interrogatory 1. Do you know any, and which, of the parties to the above entitled cause? Did you know the late John Fisher in his lifetime? When or about what time did he die?

Interrogatory 2. Do you or not know whether the defendant, John S. Hunter, ever received from said John Fisher, in his lifetime, or from his administrator after his death, or from his estate after his death, any notes, bonds, bills of exchange, accounts or claims of any sort, belonging to said John Fisher, or to his estate, or of either of the mercantile firms of Fisher & Johnson, Fisher & White, or Fisher, White & Co., of which said Fisher was or had been a partner? If so, please state as fully and particularly as you can any such note, bond, bill of exchange, account and claim, with the amounts and persons liable on the same. Please make a list of them and attach the same to your answer to this interrogatory.

Interrogatory 3. Was or was not the said John Fisher, in his lifetime, a partner in the mercantile firms of Fisher & Johnson, Fisher & White, or Fisher, White & Co.? Had he or not, during his life, and at the time of his death, a right to or control of the effects of the said firms? State all you know on this subject.

Interrogatory 4. What business had the said John Fisher been mostly engaged in, and what business was he engaged in prior to and at the time of his death? Where did he carry on business and reside? Where did the defendant, John S. Hunter, reside prior to and at the time of the death of the said John Fisher? What was his business or profession, and where did he carry on his business? Had or had not the said Hunter been for many years the lawyer or legal adviser of the said John Fisher? And was he not well acquainted with the business and affairs of the said John Fisher?

Interrogatory 5. Did you or not ever see the said Hunter write? Are you or not acquainted with his handwriting? If yea, look at the paper marked A, hereto attached, and say whether the same is or is not in the handwriting of the said Hunter; and whether the signature of Hunter & Cook to the same is or is not in the handwriting of the said Hunter? Did or did not the said Hunter sign the same in your presence? When was it signed, or about what time? By whom, and when,

or about what time, and for what purpose, were the notes, accounts, &c., therein mentioned, put into the hands of said Hunter? And were or were not the notes, &c., therein mentioned, or any and which of them, ever returned to you by the said Hunter? Which of them were good? Which were bad? Which were collected by the said Hunter? Which were not collected by said Hunter? Which could have been collected by due diligence?

Interrogatory 6. Did you or not at any time administer on the estate of the said John Fisher, deceased? When or about what time did you commence acting as administrator of the estate of the said John Fisher? How long, or about how long did you act as such administrator? And when or about what time did you cease to be such administrator?

Interrogatory 7. State if you know of the said John S. Hunter having received any property, real or personal, of the said John Fisher, or of his estate, on any and what account? If yea, state any and all such property, and its value. State what was done with such property, and what it produced in money to the said Hunter, if you know.

Interrogatory 8. What slaves were left by the said John Fisher at his death, belonging to his estate? What became of such slaves? If you say they were sold, state where, and when, or about what time, and by whom were they sold? For what amounts were they sold, and who received the moneys or proceeds arising from such sale? If the proceeds or moneys arising from such sales were applied to the payment of any debt or debts, to what debt or debts was such application made? And by whom, or at whose request was such moneys so applied? Did or did not the said Hunter get any, and what benefit, relief, or indemnity by the use or application of such moneys to the payment of said debts? What means had you of knowing these facts?

Interrogatory 9. What other personal property besides slaves had the said John Fisher at the time of his death? Of what real estate did he die seised and possessed? What became of such real estate and other personal property? What was the value of the same? Where, and when, or about what time were the same sold? Who received the moneys arising from such sales, and how were such moneys used and applied? What were the amounts of such sales, or about the amounts? State as fully and particularly as you can. Had or had not the said Hunter the benefit of such sales, and how and to what extent? What debts were thereby paid in whole or in part? State fully all you know on this subject.

Interrogatory 10. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this case, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

WM. G. JONES, *Solicitor for plaintiff.*

Filed, 21st February, 1851.

JOHN FITTS, *Clerk.*

Paper marked A, referred to in the 5th interrogatory.

HAYNEVILLE, 15*th February*, 1838.

The following accounts and notes *has* been handed over to us by Mr. Wm. P. Fisher, one of the executors of Jno. Fisher, having been assigned to us some time since to meet the liabilities of J. S. Hunter for said Fisher, affidavit of which is made:

Harrison Robinson, account	$20 81
James Jenkins	16 00
Noah Hale	28 62
Stephen Merriweather	25
G. Gresson	12 13
Jno. S. Washington	55 63
Josh. Mealhom	116 50
W. C. Munday	53 33
Josh. Meacham	36 16
Henry M. Thomson	19 94
Wm. Thomas	16 25
James Doetry	8 78
James Kimball	4 25
Joseph Kimball	3 56
Wm. Allen	7 50
John Monyrant	502 08
Acts. as per memorandum	68 31
Francis Adkin, jr.	48 25
Thos. B. Scott	93 58
	$1,092 87
Scott & James	3 12
J. J. Simmons	3 12
H. J. P. Shelton	3 00
A. Sewell	12 63
B. W. Rutland	2 25
Henry Sanders	27 38
Miss A. Rynald	54 38
John Stewart	22 62
W. B. Simonton	75
Mrs. Stephens	3 12
John Philpot	3 12
Jno. Maheart	79 90
Jas. T. McIntyre	13 50
P. S. Stewart	9 75
Wm. Sockoley	10 81
Stewart McConnell	13 00
Geo. A. McDaniel	8 53
D. Little	14 33
Mrs. McGill	44 23
J. G. Knowles	15 36

Jacob Jenkins	$1 09
Mrs. C. Jones	9 25
Larkin Kemp	5 00
Elias Johnson	25
W. H. Dubose	24 43
Samuel Clark	50
Geo. L. Davidson	187 27
	$1,765 48
Jas. P. Cary	2 63
Wm. Denlen	31 31¼
John Cook	1 00
James Davenport, run away	126 21
John Craig, run away	11 00
J. P. Daniel, insolvent	3 38
Thomas Blake	5 75
Theophilus Bryant	60
Mrs. Jonah Beck	51 45
Edward Bell	3 38
G. B. Bibb	4 13
Trustees Female Academy	8 75
John G. Ashby	75
Jacob Avent	1 00
Joel Bell	3 77
Edmund Alexander	3 19
Edward Bell	3 79
Mary Appleby	19 68
Arthur Baxter	120 20
Joseph Graham	1 00
John M. Huger	2 62
John M. Giddens	36 39
John Hunt	8 13
Thomas King	4 00
John Hughes	59 00
Wm. B. Holt	2 50
Charles Freeman	30 11
	$2,312 10
Thornton W. Harmon	72 40
Franklin Cross	8 38
J. W. Curtis	515 50
Jesse Allen	7 62
Elhamon Aldridge	19 12
Stephen Bryant	31 08
Buntis Sally	1 38
Fennel Allen	62½
Wm. W. Crisel	10 22
Samuel Jones	2 00

Johnson Holly	$21 10
William Wade	7 00
Morris Warden	43 91
"	12 50
C. W. Sturges, insolvent and dead	42 80
	$3,107 91

The condition of those owing these accounts *are* not known to us.

List of notes.

One on Russel Watson	$41 25
Benj. D. Wade	81 09
A. B. Templeton	16 87
John Philpot	35 80
E. A. Pool	3 25
Lemuel Pruitt	14 82
Memorandum of small notes	205 69
A. W. Luckie	26 41
"	71 70
	$490 88
David Kimble	16 13
E. A. Homer	5 50
M. Henton	15 50
W. B. Holt, run away	27 18
James B. Hellarom	61 75
Henry M. Harrison	36 52
Jesse Hughes	42 50
H. Gray	60 00
Drew's Fort	42 10
John A. Elmon	30 00
"	360 00
James Davenport, as before	187 50
" "	49 62
" "	275 06
M. H. Dubose	38 61
George L. Davidson	41 14
James A. Cunningham	13 25
Joseph W. Capps	12 75
Jacob Carter	19 13
Jacob Adams	1 81
William E. Adams	15 13
R. Appleby, (insolvent)	148 23
L. B. Acker "	125 60
	$2,115 83
A. W. Luckie	9 50

(Signed) HUNTER & COOK.

The rights under this assignment, to which this has reference, to be decided in chancery of the next term.

(Signed) HUNTER & COOK,
WM. P. FISHER,
Administrator of John Fisher's estate.

Commissioner's endorsement on paper marked A.

At the execution of a commission for the examination of witnesses, between M. B. Hinkle, complainant, and Moses Wanzer, John S. Hunter, and James F. Johnson, defendants, this paper was produced and shown to William P. Fisher, a witness, and by him deposed to before me. As witness my hand and seal.

ISAAC B. STONE, [SEAL.]
Commissioner.

March 25, 1851.

Cross interrogatories to Wm. P. Fisher.

1. The witness is requested to answer fully and at large to all the questions of the plaintiff, setting forth the facts known to him, and the facts ascertained by him from others, and showing who gave the information.

2. Please state what sums of money you know J. S. Hunter to have received for his protection; also the extent of his liabilities for Fisher, or any firm of which Fisher was a member.

3. Please state what moneys were paid by John S. Hunter on account of said Fisher or the firm of which he was a member; and when he paid them, and on what account.

CAMPBELL & CHANDLER,
For defendants.

A copy. Attest: JOHN FITTS, *Clerk.*

Commission to take the testimony of Wm. P. Fisher.

UNITED STATES OF AMERICA.

Circuit court of the United States, for the fifth judicial circuit and southern district of Alabama.

MORGAN B. HINKLE, administrator de bonis non of John Fisher, dec'd,
vs.
MOSES WANZER, James F. Johnson, and John S. Hunter.

To John N. Smith, Isaac B. Stone, and Milton J. Saffold, esqs., of Lowndes county, State of Alabama, greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you, or any one of you,

full power and authority to examine William P. Fisher, of said county and State, and named in the direct and cross interrogatories hereunto attached, as witness in a cause pending in our said court, wherein Morgan B. Hinkle, and as administrator of John Fisher, deceased, is complainant, and Moses Wanzer, James F. Johnson, and John S. Hunter, are defendants. And therefore we command you, or any one of you, that at such times and places as you shall appoint, you do cause the said William P. Fisher, a witness on the part of complainant in said cause, to come before you, or either of you, and then and there examine him on oath as a witness in the cause aforesaid; and that you, or either of you, do take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seals or the seal of any one of you, into our said circuit court, with all convenient speed.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, [SEAL.] the second Monday of December, in the year of our Lord one thousand eight hundred and fifty.

Issued the seventh day of March, 1851.

Attest: JOHN FITTS,
Clerk C. C., sou. dist. Ala.

The appointment of commissioners is hereby confirmed, this 7th March, 1851.

JOHN. GAYLE,
Judge U. S. dist. court for Alabama.

Testimony of Wm. P. Fisher, as substituted by agreement of counsel for his deposition, which is lost or mislaid.

MORGAN B. HINKLE
vs.
MOSES WANZER, John S. Hunter, et al. } In chancery.

In the circuit court of the United States, for the southern district of Alabama.

The deposition of William P. Fisher having been duly taken in this cause, and read on the trial, without objection, on the interrogatories filed and the receipt thereto attached, and the said deposition having been lost or mislaid from the file of papers in this cause since the decision of the cause, it is agreed by the parties, by their solicitors, that the said William P. Fisher proved, in and by said deposition, that he was the administrator of his brother, John Fisher, deceased; that the defendant, John S. Hunter, was a lawyer, practising in partnership with one Cook, under the firm of Hunter & Cook; that the receipt attached to the interrogatories, and the signature thereto, are in the handwriting of said Hunter, and was executed to the witness by said Hunter, and the notes and accounts therein specified were delivered by the witness as administrator aforesaid of John Fisher, deceased, as collat-

eral security to indemnify him, said Hunter, against liabilities he was under as security or endorser for said John Fisher.

Some other facts not deemed very material in the case were proved by the witness; and it is agreed that this statement may be substituted in lieu of the missing or lost deposition, and constitute, with the interrogatories and receipt, part of the record in this case, to be sent up to the Supreme Court of the United States.

WM. G. JONES,
For complainant.
DAN'L CHANDLER,
For defendants.

Interrogatories to H. Barney, Wm. Sayre, D. Stodder, D. Chandler, J. A. Campbell.

Defendant's testimony.—Interrogatories to be exhibited to Hindman Barney, Wm. Sayre, David Stodder, Daniel Chandler, John A. Campbell, witnesses for the defendant, John S. Hunter, in a cause pending in (the court of chancery of) the circuit court of the United States, for the southern district of Alabama, in which Morgan B. Hinkle, administrator, &c., is plaintiff, and John S. Hunter and others are defendants.

1. Can you state whether John S. Hunter, at any time from the year 1836, and subsequent to that year, became liable as surety or endorser, or in any manner bound, for John Fisher, formerly of Hayneville, Alabama, or any firm of which he was a member? If so, please state the manner of his obligations, and the amount thereof.

2. Do you know of any payment made by said Hunter to you, either as principal or agent holding such securities? If so, please state what sums he paid, and the date of the payment.

3. Do you know of any payments to others on such an account? Describe them, and the payments under them.

CAMPBELL & CHANDLER,
For defendant.

Notice of interrogatories filed.

Circuit court of the U. S., for the southern district of Alabama.

M. B. HINKLE, adm'r, et al., vs. MOSES WANZER et al. } In chancery.

To Wm. G. Jones, esq., solicitor for said complainant:

Take notice, that ten days after the filing of the foregoing interrogatories a commission or commissions will issue to take the depositions of the above named witnesses, to be read as evidence in said cause.

Mobile, Feb. 27, 1851. JOHN FITTS, *Clerk.*

Marshal's return.

Received February 27, 1851, and on same day executed the same upon Wm. G. Jones, esq., solicitor for complainant, and handed him a copy.

C. BINGHAM, *U. S. marshal.*

Cross interrogatories.

In the circuit court of the United States, for the southern district of Alabama.

MORGAN B. HINKLE
vs.
MOSES WANZER and JOHN S. HUNTER, et al.

Cross interrogatories on behalf of the plaintiff in the above entitled cause, to be propounded to Hindman Barney, William Sayre, Daniel Chandler, and John A. Campbell, witnesses to be produced, sworn, and examined for the defendants in the above entitled cause.

Cross interrogatory 1. State whether the defendant, Moses Wanzer, has or has not now any interest in the judgment in his name as plaintiff against Morgan B. Hinkle, referred to in this case; who has the beneficial interest in the said judgment; who controls it; does or does not the defendant, John S. Hunter, control it, and claim the beneficial interest in it; is or is not this done with the knowledge or consent of the defendant, Moses Wanzer; is it or not done with the knowledge or consent of the attorneys of the said Moses Wanzer?

Cross interrogatory 2. If you state that you know of any payments made by the defendant, John S. Hunter, on account of liabilities incurred by him as security or endorser for John Fisher, or any firm of which John Fisher was a member, please state as fully and particularly as you can the date, amount, and character of each and every such liability, and each amount so paid by the said Hunter, and the time when, and person to whom, it was paid. Do you or not know, of your own knowledge, whether such payment was made by said Hunter out of his own individual moneys or funds, or was it out of moneys or funds furnished by said Fisher, or any firm of which he was a partner, or derived from property or effects of said Fisher, or any firm of which he was a partner?

Cross interrogatory 3. Do you or not know of the said John S. Hunter having received or procured from said Fisher, or any firm of which he was a partner, any moneys, property, judgments, notes, or effects, as indemnity for his liabilities for said Fisher? If so, please state as fully and particularly as you can all such moneys, property, judgments, notes, or effects, and the amounts and value of the same, and the moneys received or realized by said Hunter therefrom.

Cross interrogatory 4. State all you may know beneficial to the plaintiff.

WM. G. JONES, *Attorney for plaintiff.*

Filed 7th March, 1851. JOHN FITTS, *Clerk.*

UNITED STATES OF AMERICA.

Circuit court of the United States, for the fifth judicial circuit and southern district of Alabama.

Commission to take testimony for defendants.

MORGAN B. HINKLE, and as administrator de bonis non of John Fisher, deceased,
vs.
MOSES WANZER, James F. Johnson, and John S. Hunter.

To Richard B. Owen, esq., U. S. commissioner for the southern district of Alabama, greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you full power and authority to examine Hindman Barney, William Sayre, David Stodder, Daniel Chandler, and John A. Campbell, named in the direct and cross interrogatories hereunto annexed, as witnesses in a cause pending in our said court, wherein Morgan B. Hinkle, and as administrator de bonis non of John Fisher, deceased, is complainant, and Moses Wanzer, Jas. F. Johnson, and John S. Hunter, defendants. And therefore we command you, that at such times and places as you may appoint, you do cause the said Hindman Barney, William Sayre, David Stodder, Daniel Chandler, and John A. Campbell, witnesses for the defendants in said cause, to come before you, and then and there examine them on oath as witnesses in the cause aforesaid. And that you do take such examination, and reduce the same into writing, and return the same annexed to this writ, closed up under your seal, into our said circuit court with all convenient speed.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit court, the fourth Monday of December, in the year of our Lord one thousand eight hundred and fifty.

Issued the twentieth day of March, 1851.

Attest: JOHN FITTS,
Clerk C. C., southern dist. Ala.

Caption to depositions.

UNITED STATES OF AMERICA,
Southern district of Alabama, State of Alabama, county of Mobile.

Be it remembered, that on this twenty-seventh day of March, in the year of our Lord one thousand eight hundred and fifty-one, I, Richard B. Owen, the commissioner named in the annexed commission from the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, did, in pursuance of the said commission,

call and cause to be and personally appear before me, in the city of Mobile, Hindman Barney, William Sayre, David Stodder, Daniel Chandler, and John A. Campbell, witnesses named in the above mentioned commission, to testify and the truth to say on the part of the defendants in a certain cause, depending and undetermined in the said circuit court of the United States, for the said circuit and district, at Mobile, in the said district and State, wherein Morgan B. Hinkle, administrator de bonis non of John Fisher, deceased, is complainant, and Moses Wanzer, James F. Johnson, and John S. Hunter are defendants.

And the said witnesses being sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, did thereupon depose, testify, and answer to the direct and cross interrogatories annexed to the commission, as follows, that is to say:

John A. Campbell's deposition.

John A. Campbell being sworn, answers to the direct interrogatories:

1. That in 1837, John S. Hunter endorsed a number of notes and bills, at the instance of John Fisher. The papers he agreed to endorse are described in the paper, a copy of which is found in his answer, and the original of which we have, made with Gordon, Campbell, and Chandler. All the bills described in that paper were not endorsed, but deponent thinks there was a modification of the agreement by which the first draft in favor of *of* Bloodgood's claim, and perhaps the three and six months' paper, were extended to a further time; also Gi7ham did not endorse all the papers. There was a modification of the agreement with Norris & Co., as to the amount and time of payment. The debts were all due from Fisher, or from firms in which Fisher was interested, and Hunter endorsed the paper for his account and by his request. Deponent made the arrangement for the creditors, and his firm received the paper executed. The amount endorsed was about $20,000.

2. The payments were not made to this deponent. A portion of the paper was transferred to the Bank of the United States for Pennsylvania, then represented in this city by Mr. George Poe, and afterwards by H. Barney; a portion to Sayre, Converse & Co., who represented the Tileston papers mentioned in same paper, and the rest to other parties, by directions of the owners of it.

3. The only payment known to this deponent by Hunter for Fisher is shown from the following receipt taken from the books of the firm of Gordon, Campbell & Chandler.

BANK OF COLUMBUS }
vs. }
JOHN S. HUNTER. }

Judgment in ninth circuit court United States, southern district of Alabama—April term, 1838.

Received of defendant, by his attorneys, Messrs. Gordon, Campbell

& Chandler, four thousand eight hundred and eighteen $\frac{37}{100}$ dollars, in part of the judgment rendered in said court, and forty-three dollars costs, which I have paid to the clerk and given separate receipts for first amount to John A. Campbell, esq., and for second taken clerk's for defendant. April 16, 1838.

T. F. FOSTER, *Plaintiff's attorney.*

Deponent was informed by Mr. Fisher, that the defendant became liable for him on the cause of action in this case, and deponent knows that Mr. Foster, whose name is attached to this receipt, was the plaintiff's attorney in that cause; that his signature to the receipt is genuine, and has heard and fully credits the information that Mr. Foster is dead. Deponent supposes he paid the money for Hunter from the receipt, but of this he has no recollection.

To the cross interrogatories deponent answers:

1. Moses Wanzer has not any interest in this suit. The beneficial interest is in John S. Hunter; John S. Hunter controls it. Deponent does not know that Moses Wanzer gave any specific consent to this transaction. The facts are, that the law firm of Gordon, Campbell & Chandler held a very large amount of claims against Fisher, and Fisher's various firms, in 1837. Fisher, to avoid suit, arranged some by agreeing to give the drafts specified in the paper found in Hunter's answer, and did give a large portion of those drafts. He arranged the remainder by depositing notes for collection with the firm to satisfy the debts. Wanzer was a creditor for a note of between eight or nine hundred dollars, described in Hunter's answer, and deponent's firm then held it. The suit in this case was brought to collect that demand. Other collections were made from Fisher's securities, and Wanzer's debt fully satisfied. Wanzer was informed of the arrangements for the collection of his debt and approved them. Fisher gave verbal and written directions to deponent to protect Mr. Hunter any remainder there might be after the payment of the claims in the hands of deponent's law firm. Deponent has in one or more instances acted on the instructions with the knowledge of William P. Fisher, former administrator. He also states that he has searched for the instructions without finding them, and supposes them lost or mislaid, but his memory is distinct as to their effect. Deponent several years ago gave written directions to the clerk to permit Mr. Hunter to control this judgment and the others, and hoped he had at that time terminated his relations with it.

2. The whole transaction, so far as deponent knows of it, will be found in the paper copied and referred to before, and the files of the court in the case of the Bank of Columbus vs. Hunter. Deponent knows nothing of any payment made by Hunter, except that to Mr. Foster, and deponent knows nothing of the source from whence the money to make that payment came. The papers endorsed by Hunter were passed from deponent's hands. Deponent thinks that Mr. Fisher was dead in 1838, when the payment to Foster was made, but of this

is not certain. He died entirely insolvent. Elmore was insolvent at the maturity of these demands, and has remained so.

3. Deponent has heard that Hunter received security in part, but of this has no personal knowledge; and his information is found in the answer of Mr. Hunter.

4. He knows nothing more.

J. A. CAMPBELL.

Stodder's deposition.

David Stodder being sworn, states in answer to the direct interrogatories:

1. In the year 1837, T. P and C. Norris & Co. held a note for $1,471 $\frac{71}{100}$, of W. P. Fisher & Co., past due; an account of W. & J. Fisher, past due; and T. P. Norris & Co. had an account against the same firm, past due; and account against W. P. Fisher & Co. The first note was placed in Gordon, Campbell & Chandler's hands for collection, who agreed to an arrangement with John Fisher. After this time the arrangement was changed, and the four debts mentioned above included in a draft of Fisher and Johnson on J. A. Elmore, endorsed by George Givham and John S. Hunter, for $2,592 $\frac{50}{100}$, due 1st April, 1838, and those debts extinguished.

2. This draft was not paid till 11th January, 1840. It was sued after protest, and the money paid over to T. P. and C. Norris & Co., by their attorneys, Gordon, Campbell & Chandler, 11th January, 1840, was $3,156 $\frac{14}{100}$, less commissions $97 $\frac{64}{100}$.

3. I know nothing further.

To the cross interrogatories deponent answers:

1. I know nothing of the matters herein inquired of.

2. I have stated the facts so far as I know them. The draft was sued and money collected. I do not know from whom paid or how. I only know that the draft was put in suit, and the money collected.

3. I know nothing further.

4. I know nothing more.

D. STODDER.

Sayre's deposition.

William Sayre being sworn, answers to the direct interrogatories:

1. Deponent says that the firm of Sayre, Converse & Co., of which he was a member, held the following securities, viz:

John A. Elmore's acceptance of Fisher & Johnson's draft, endorsed by J. S. Hunter, dated April 1, 1837, at 9 months, and due January 1|4, 1838, for $518 81.

Also John A. Elmore's acceptance of Fisher & Johnson's draft, endorsed by J. S. Hunter, dated April 1, 1837, at 12 months, and due April 1|4, 1838, for $528 59.

Also John A. Elmore's acceptance of Fisher & Johnson's draft, en-

dorsed by J. S. Hunter, dated May 20, 1837, due April 1|4, 1838, for $1,058 80. He finds that subsequently to this the same firm took the note of John S. Hunter, as follows: Note of J. S. Hunter in favor of Sayre, Converse & Co., dated May 28, 1837, for twelve hundred and twenty-four $\frac{1}{100}$ dollars, due 1|4 March, 1840. The witness does not recollect the transaction, but supposes from the amount of the note, corresponding with that of the last mentioned bill, interest included, that the debt on that bill was settled by this note. He knows of no transaction of the firm of Sayre, Converse & Co., with John S. Hunter, except what is gathered from these papers.

2. Witness answers that these papers he supposes were paid, as he has no evidence to the contrary, and John S. Hunter has always been since their maturity a man of large estate. The other parties about the time of their maturity he knows nothing about, but supposes the most if not all of them were not good. The papers do not belong to the firm of Sayre, Converse & Co., at this time, and deponent has no doubt that they were paid. The note was no doubt paid at the Planters' and Merchants' bank, to whom Sayre, Converse & Co., transferred it. Deponent's books have been destroyed, so that he can give no further account of the matter.

3 Deponent knows nothing further.

To the cross interrogatories deponent states:

1. He knows nothing of the matters enquired of.

2, 3, and 4. Deponent has stated all he knows.

W. SAYRE.

Barney's deposition.

Hindman Barney being next sworn, answers to the direct interrogatories:

1. The United States Bank, chartered by the State of Pennsylvania, represented by George Poe, jr., in this city, held at its agency, in Mobile, in which I was clerk and general keeper of its accounts in the year 1837, and prior to their maturity the following bills of exchange, viz.: Four bills of exchange dated 1st April, 1837, drawn by Fisher & White, and accepted by John A. Elmore, and endorsed by John S. Hunter, B. F. Dozier, Ross, Hoyt & Ford, H. Chesebrough.

1 bill payable		1st April, 1837, for - - - -		$2,859 00
"	"	" October, 1837, for - - -		3,035 69
"	"	" January, 1838, for - - -		3,212 38
"	"	" April, 1838, for - - - -		3,389 07
				$12,496 14

2. On the 26th October, 1838, Gordon, Campbell & Chandler, paid to me, as agent for said bank, $4,336 on account of the above bills of exchange, leaving the amount due on said bills on that day, including interest and $11 26 protest, $9,089 $\frac{71}{100}$. At this time I

1340.

acted as agent for said bank in the absence of George Poe, jr., from Mobile. Witness says, that on the 26th January, 1839, this balance was settled by John S. Hunter by giving to George Poe, jr., as agent of said bank, his six promissory notes, with C. D. Hunter as security, all dated Mobile, 22nd January, 1839, payable as follows: 2 payable 23rd April, 1841—1 for $3,089 71, the other for $619 94; 2 payable 23rd April, 1842—1 for $3,000, the other for $840; 2 payable 23rd April, 1843—1 for $3,000, the other for $1,080; amounting to the sum of $11,627 65; all of which notes were subsequently paid by Jno. S. Hunter to me as agent of said bank in place of George Poe, jr., resigned in March, 1840.

3. I know of no payments to others.

To the cross interrogatories witness answers:

1. I have no knowledge whatever of the matters herein enquired of.

2. I have in my answers to the 1st and 2nd direct interrogatories already stated the character of the liability of John S. Hunter, and given a description of his notes, the amount of which was paid to me. Some of the notes were not paid at maturity, but were renewed until all were finally paid as above stated. I do not know if the money to pay these notes was furnished to Hunter by Fisher or any other person. From the manner in which the payments were made to me, I thought they were from said Hunter's own resources. He gave acceptances of his factorage house in Mobile in settlement of part.

HINDMAN BARNEY.

Chandler's deposition.

Daniel Chandler, being then a member of the firm of Gordon, Campbell & Chandler, and in consequence, his testimony, being the same as that of John A. Campbell, it is not taken down.

Commissioner's certificate.

And I, Richard B. Owen, the commissioner aforesaid, do hereby certify, that on the day and year first above mentioned, I was attended by the above named witnesses, and thereupon the above depositions were taken and reduced to writing by me, and from their statements and after carefully reading the same to the said witnesses, to each his own deposition, they subscribed their names thereto as above written.

I have retained the said depositions in my possession for the purpose of sealing up and directing the same, and after such sealing and directing, placing in the hands of the clerk of the court for which they were taken. And I further certify, that I am not of counsel or attorney for either of the parties in the said depositions or captions named, nor in any way interested in the event of the said cause.

Witness my hand and private seal as commissioner, the day and year above written.

RICHARD B. OWEN, [L. S.]
Commissioner.

Minutes.

And on the 19th April, 1851, the same being a day of the April term, A. D. 1851, of said court, the following order was made in this cause, viz:

Order to pub'ish testimony.

MORGAN B. HINKLE, adm'r de bonis non, &c.
vs.
MOSES WANZER, James F. Johnson and John S. Hunter.

By consent of parties it is ordered, that the testimony on file in this cause be published.

Minutes.

And on the 23d day of December, the same being a day of the December term, A. D. 1851, of said court, the following order was made and entered in this cause, to wit:

Order allowing further time to take testimony, and Continuance.

MORGAN B. HINKLE, administrator, &c.,
vs.
MOSES WANZER et al.

This day came the plaintiffs and defendants, by their attorneys, and, it is ordered by the court that the parties have leave to take testimony in this cause until the first Monday in April next; and by consent, it is ordered that this cause be continued.

Minutes.

And on the 16th day of April, the same being a day of the April term, A. D. 1852, of said court, the following order was made in this cause, to wit:

Order to publish testimony.

MORGAN B. HINKLE, administrator, &c.,
vs.
MOSES WANZER et al.

On motion, it is ordered by the court that the testimony now on file in this cause be published.

Minutes.

And on the 11th day of January, 1853, the same being a day of the December term, 1852, of said court, the following written opinion was filed by the Hon. John Gayle, presiding, and final decree pronounced, as follows, to wit:

Written opinion.

MORGAN B. HINKLE, &c., adm'r de bonis non,
vs.
MOSES WANZER, James F. Johnson, and John S. Hunter.

The questions made by the bill and answer are—

1. Has Hunter any right to control the judgment which is the subject of controversy?

2. Has Hunter been reimbursed the amount he has paid for Fisher as his endorser?

3. Did Thomas Long, in his lifetime, pay to Hunter, the defendant, the judgment in question?

As to the first question—the answer of Hunter and the deposition of J. A. Campbell, esq., show, that Fisher, in his lifetime, gave written directions to Gordon, Campbell & Chandler, to protect Hunter out of securities placed in their hands, against his liabilities as Fisher's endorser. That after Fisher's death in 1838, his administrator approved and sanctioned these directions, and in pursuance thereof he, Campbell, directed the clerk to give Hunter the control of the judgment—in other words, transferred the judgment to Hunter.

The plaintiff's counsel insists that this authority to protect Hunter ceased after the death of Fisher, and that his death operated as a revocation thereof. While it is admitted, that a simple agency or authority to act for another is revoked by the death of the principal, yet I do not regard this as an agency of that kind. Hunter was liable as Fisher's endorser for a large amount. It was right and proper that he should receive indemnity from Fisher, and his instructions to his attorneys operated as an equitable assignment of the papers and securities to which they referred, and were no longer under Fisher's control.

As to the second inquiry—has Hunter been refunded the amount he has paid for Fisher as his endorser? This leads to an inquiry into the state of the accounts between the parties.

The answer of Hunter and the proofs show, that he has paid bills and notes which he had endorsed for Fisher, to the amount of about thirty thousand dollars.

Hunter has stated an account of moneys he has received from real estate and slaves sold under a deed of trust from Fisher, and from notes and other effects belonging to Fisher. This amounts to the sum of sixteen thousand five hundred and fifty-eight dollars. The proof made by the complainant shows, that in addition to this sum he received from Sadler two thousand two hundred dollars, and from Gilchrist one hundred and seventy-five dollars. It is proved also, that he received a number of notes and accounts, amounting to about five thousand two hundred and thirty-two dollars. A list of them is furnished, and it contains about 130 items, and for sums from one dollar to five hundred dollars. The receipt for these is in the name of Hunter and Cook, partners in the practice of law, but the collections to be used for Hun-

ter's benefit and for his indemnity as Fisher's security. No allusion to this list of accounts is made by Hunter in his answer. In his statement, however, of moneys received from the effects of Fisher, he admits the receipt of about $1,200, from persons not ascertained and in sums not recollected. It is not improbable that this was the sum realized from the list of notes and accounts. N. Cook, who was the legal partner of Hunter, states, that these accounts were of but little value, and he thinks that Hunter could not have received from them more than seven or eight hundred dollars. However this may be, if their entire amount and the sums received from Sadler and Gilchrist be placed to the credit of Fisher, there will still be due to Hunter a considerable balance.

The last and most important question is, did Long, in his lifetime, pay to Hunter the amount of the judgment?

The bill charges, that "sometime in the year 1841, the said John S. Hunter claimed to be entitled to the money due on the judgment, and that he, the said Thomas Long, fully paid and satisfied to the said Hunter the amount of the said judgment; and the said Thomas Long produced and showed to your orator a receipt or statement in writing, signed by the said John S. Hunter, whose handwriting was well known to your orator, showing that the said judgment had been fully paid and satisfied by the said Long."

The allegation of payment by Long, as charged in the bill, or that payment to him of the judgment has been made in any manner, is positively denied by Hunter in his answer. Mary Long, the widow of Thomas Long, was examined as a witness, and she states that she is acquainted with the handwriting of John S. Hunter, the defendant, and that she saw a receipt in possession of Long, signed in the handwriting of Hunter; that she has searched for the receipt among the papers of her deceased husband, but cannot find it, and thinks it is lost or mislaid. The receipt, she further says, purported to be in full satisfaction of the judgment in question, and was dated in October, 1841 or 1842, but she thinks in '41. In further answer to the interrogatories, she states, in positive terms, that the debt was paid by Long to Hunter, and that previous to the date of the receipt, debts and claims had been placed in the hands of Hunter, to be collected and applied to the payment of the judgment, and when the receipt was given the balance due on the judgment was paid in cash. Mrs. Long is the only witness who controverts the answer. The answer of Hunter to the allegations of the bill is required by the complainant. He makes Hunter a witness himself, and his testimony is equal to the testimony of any other witness. Clarke vs. Van Reimdyk, 9 Cranch, 153.

Thus far, then, the evidence on either side is equal. The plaintiff cannot prevail unless the balance of proof is in his favor, and he must add to the testimony that of another witness, or there must be circumstances to corroborate and support his single witness in order to turn the balance.—Ib.

The plaintiff's counsel adverts to two circumstances which he thinks accomplish this object; the first is, that no execution after 1840 till the year

1849 was issued, and he contends that this delay can only be accounted for on the ground that it had been paid, as stated by Mrs. Long, especially as Hunter and the defendants resided, during this time, in the same county. The answer to this is, that the defendants were insolvent, that an execution and alias had been issued shortly after the judgment was rendered, on both of which the marshal had returned nulla bona. When the officer entrusted with the execution of final process makes repeated unavailing efforts for its satisfaction, it would be useless to cause others to be regularly issued, to be attended with the same result. As Hunter resided in the same county with the defendants, it is presumable that he kept himself informed of their situation, and there is no evidence to show that there was any prospect of making the money at any time previous to the issue of the execution in 1849; and even then, it appears that the complainant had not property sufficient the judgment, for he states in his bill that the execution was levied on his property and on a sum of money in his possession belonging to another person, and that afterwards a summons of garnishment was issued to John N. Smith on the supposition that he was indebted to the complainant.

The other circumstance adverted to is, that Mrs. Long, in her statement that the judgment was in part satisfied from collections made by Hunter of debts due to her husband, is corroborated by the deposition of Boling, which the counsel contends shows that Hunter had collected money for him. This witness states that he collected in Conecuh county the sum of $1,047 66 from William A. Bell, on a judgment against Bell, in favor of Long & Porter, as executors, but of whom they were executors he does not recollect. The suit was on a note, and the writ was issued by Hunter & Cook, attorneys, who resided in Lowndes county, and sent to the witness, who resided and practised law in Conecuh county, with the request that he would attend to the case for them. This he did, and collected and paid over the money to Hunter, who gave a receipt in the names of Hunter & Cook; the witness does not know of whom Hunter & Cook received the note or what was done with the money.

It is not perceived that Thomas Long had any connexion whatever with the case referred to by the witness; his having the surname with one of the executors for whom the suit was brought raises no presumption that he was the same person, and if it did it cannot be inferred that Hunter appropriated it to the payment of the judgment.

The bill is sworn to by Hinkle, the complainant, and his counsel insists that his oath is to be received as evidence in the cause. Original bills for relief are never sworn to except for the purpose of obtaining an interlocutory order for an injunction on the adverse party, as was the case in this bill, and the oath of the plaintiff will not be looked to as evidence except on a motion to rescind such order or to dissolve the injunction. The rule contended for would, in all cases, enable a plaintiff to make evidence for himself, and the allegations of the bill would

go out already proved; and if the defendant could not meet them with a positive denial, such proof would often procure a recovery.

The principle insisted on has never been sanctioned by the chancery practice in any period of its history, and would be an innovation that would go far to defeat the objects and purposes for which it was introduced. I understand the true rule to be, that upon a question of the dissolution of an injunction, the allegations of the bill will be taken as true, if they are not admitted or denied in the answer, but on the final hearing they must be proved. Young vs. Grundy, 6 Cranch, 51.

On the whole, I am of opinion, that the plaintiff has failed to sustain the allegations of the bill, and that a decree should be rendered for the defendant.

It is therefore ordered that the following decree be entered and recorded:

Final decree dismissing bill, &c.

MORGAN B. HINKLE
vs.
JOHN S. HUNTER, and others.

This cause coming on to be heard on the bill, answer, exhibits and proofs, and on the argument of counsel, and being fully examined and understood, it is the opinion of the court that the judgment, which is the subject of this controversy, has been assigned to the defendant, John S. Hunter, and that he has the right to control and collect the said judgment. The court is further of the opinion that the said Hunter has paid out large sums of money as the endorser of Fisher, and that he has not been reimbursed the amount so paid out; and further, that the plaintiff has failed to prove, as the bill alleges, that Thomas Long in his lifetime paid to Hunter the amount of the judgment in question. It is therefore ordered, adjudged and decreed, that the bill be dismissed, and that the complainant pay the costs of this suit.

JOHN GAYLE, *Judge*.

Filed, 11th January, 1853.

JOHN FITTS, *Clerk*.

Petition for appeal.

MORGAN B. HINKLE
vs.
MOSES WANZER, JOHN S. HUNTER and others. } In chancery.

In the circuit court of the United States, for the southern district of Alabama.

To the honorable the judges of the circuit court of the United States, for the southern district of Alabama.

The petition of Morgan B. Hinkle respectfully showeth, that in the above entitled cause lately pending in the circuit court of the United States, for the southern district of Alabama, in chancery, in which your

petitioner, Morgan B. Hinkle, was complainant, and Moses Wanzer, John S. Hunter and others, were defendants, a decree was rendered at the last term of said court dismissing the bill of your petitioner with costs; and your petitioner claims and prays for an appeal from the said decree to the next term of the Supreme Court of the United States.

WM. G. JONES, *for petitioner.*

Let the appeal be granted as prayed.

JOHN GAYLE, *Judge.*

Filed, 12th February, 1853. JOHN FITTS, *Clerk.*

Appeal bond.

Know all men by these presents, that we, Morgan B. Hinkle and John N. Smith, are held and firmly bound unto Moses Wanzer, James F. Johnson and John S. Hunter, in the penal sum of five hundred dollars, lawful money of the United States, well and truly to be paid to the said Moses Wanzer, James F. Johnson and John S. Hunter, their executors, administrators and assigns, and to be raised out of our and each of our goods, chattels, lands, tenements and effects, and for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents; sealed with our seals at Mobile, on this twelfth day of February, in the year eighteen hundred and fifty-three.

The condition of the above obligation is such, that whereas, in a certain bill filed by said Morgan B. Hinkle, in his own right and as administrator de bonis non of the estate of John Fisher, deceased, against said Moses Wanzer, James F. Johnson and John S. Hunter, in the circuit court of the United States, for the fifth judicial circuit and southern district of Alabama, on the equity side of said court, praying relief, &c. And on the hearing of said bill, at the December term of said court, A. D. 1852, before the Hon. John Gayle, judge of said court, a decree was rendered in favor of said defendants, dismissing said bill of the said Morgan B. Hinkle at the costs of said complainant. And whereas, the said Morgan B. Hinkle, complainant, hath prayed an appeal from the said decree by petition to the Supreme Court of the United States, returnable to the next term of said Supreme Court, which petition and appeal has been allowed by the said John Gayle, judge presiding in the said circuit court, on the filing of a bond in the penal sum of five hundred dollars, with John N. Smith security.

Now, the condition aforesaid is such, that if the said Morgan B. Hinkle shall prosecute his said appeal to effect, and shall pay all costs and damages sustained by the said Wanzer, Johnson and Hunter, or either of them, by reason of the wrongful suing out of said appeal, then this obligation to be void, else to be of full force, virtue and effect.

MORGAN B. HINKLE, [SEAL.]
JOHN N. SMITH. [SEAL.]

Witness—GEO. W. MILLER.

Approved. JOHN GAYLE, *Judge.*

Filed, February 12th, 1853. JOHN FITTS, *Clerk.*